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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM [redacted] 1918

No. [redacted] 40

WELLS FARGO & COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF NEVADA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEVADA.

FILED OCTOBER 1, 1918.

(25,266)

(25,526)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 696.

WELLS FARGO & COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF NEVADA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEVADA.

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1 STATE OF NEVADA,
County of Humboldt:

In the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt.

THE STATE OF NEVADA, Plaintiff,
vs.
WELLS, FARGO & COMPANY, a Corporation, Defendant.

Complaint.

The State of Nevada, by J. A. Callahan, District or prosecuting Attorney, of the County of Humboldt, complains of Wells, Fargo & Company, and also the property described as follows: to-wit:

That certain property belonging to said Wells, Fargo & Company, to-wit: The right to carry express and right to transact all other business, then and there, and commonly done and transacted by the said Wells, Fargo & Company over the railroad mileage operated by the Southern Pacific Company, a Corporation, on that Railroad track known as the Central Pacific Railroad, passing through said Humboldt County, from a point on the easterly boundary line thereof, at or near the South East Corner of the North East Quarter of the North East Quarter of Section twenty-eight, Township thirty-three North, Range Forty four East of Mount Diablo Base & Meridian, to the Southerly boundary line of said County, at or near a point forty rods Easterly from the South East Corner of Section Thirty-six, Township Twenty-five North, Range thirty-nine East of Mount Diablo Base & Meridian, all within the said County of Humboldt. The railroad mileage of the said Southern Pacific Company within the said County of Humboldt, on which the said Wells, Fargo
2 & Company operates its said express business is One Hundred Forty and Fourteen one Hundredths (140.14) miles, at a valuation for the said business of three Hundred Dollars ($300.00) per mile, and for cause of action says:

1.

That at all times herein stated the defendant, Wells, Fargo & Company, has been and now is a corporation organized and existing under the laws of Arizona.

2.

That between the first Monday in January, and the second Monday in Aug[illegible], A. D., 1910, in the County of Humboldt, in the

State of Nevada, H. M. Leanord then and there being County Assessor of said County did duly assess and put down on an assessment roll all the real and personal property in said County subject to taxation, and the said assessment roll was afterwards submitted to the Board of Equalization of said County, and was by said Board duly equalized as provided by law.

That said Wells, Fargo & Company was then and there the owner of and that there was duly assessed to it the above described personal property, and that upon such property there has been duly levied for the fiscal year A. D. 1910, a State tax of Two Hundred Fifty-two and Twenty-five One Hundredths Dollars, (252.25), a County tax of Three Hundred Sixty-five and Seventy-seven one Hundredths Dollars, (365.77), and a school tax for the County High School of Humboldt County, Nevada, of Forty-two and Four One Hundredths Dollars ($42.04), and a Winnemucca Town Tax, for the town of Winnemucca, Humboldt County, Nevada of Four and Twenty-one One Hundredths Dollars, ($4.21), and a Lovelock fire bond tax for the fire bonds of Lovelock, Humboldt County, Nevada of Sixty-
One Hundredths Dollars ($.60), and a Lovelock town tax
3 for the town of Lovelock, Humboldt County, Nevada of
Seventy-five One Hundredths Dollars, ($.75), and a Lovelock Sewer Bond tax, for the sewer bonds of the town of Lovelock, Humboldt County, Nevada of One and Five One Hundredths Dollars ($1.05), and a Lovelock sewer interest tax, for the interest on the Lovelock sewer bonds of Lovelock, Humboldt County, Nevada of One and Thirty-five One Hundredths Dollars, ($1.35), and a Mill City special school tax for the public school of Mill City District, Humboldt County, Nevada of Twenty-six and Fifty-two One Hundredths Dollars ($26.52), amounting in the whole to Six Hundred Ninety-four and Fifty-three One Hundredths Dollars ($694.53), all of which is due and unpaid:

Wherefore, said plaintiff prays judgment against Wells, Fargo & Company for the sum of Six Hundred Ninety-four and Fifty-three One Hundredths Dollars, ($694.53), the tax due on said personal property, and ten per cent (10%) damages for non-payment thereof at the time required by law, and the additional penalty of twenty-five (25) per centum, also required by law, and for such other judgment as to justice belongs, and for all costs subsequent to the assessment of said taxes, and for all costs and disbursements of this action.

J. A. CALLAHAN,
District or Prosecuting Attorney
for the County of Humboldt.

STATE OF NEVADA,
County of Humboldt, ss:

Personally appeared before me, a Notary Public in and for said County and State, H. M. Leonard, who, having been first duly sworn on his oath, deposes and says that he is and during the year 1910 has been the duly elected, qualified and acting assessor of Humboldt

County, that he has read the foregoing complaint, and knows
4 the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated on his information and belief, and as to those matters, he believes it to be true, that the Plaintiff in the above entitled action is a corporation and for that reason cannot make this verification, and that affiant makes this verification for and on behalf of said plaintiff.

H. M. LEONARD.

Subscribed and sworn to before me this 27th day of February A. D. 1911.

[SEAL.] J. A. CALLAHAN,
Notary Public.

I hereby certify that the foregoing is a full, true and correct copy of the original complaint in the above entitled action, filed with the Clerk of the above named Court, with all the endorsements thereon.

_____,
Attorney for Plaintiff.

(Indorsed:) No. 1815. In the Judicial District Court of the State of Nevada in and for Humboldt County. State of Nevada, Plaintiff, vs. Wells, Fargo & Company, Defendant. Complaint. Filed this 27th day of Feb. 1911. J. W. Davey, Clerk. J. A. Callahan, Attorney for Plaintiff.

5 In the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt.

STATE OF NEVADA, Plaintiff,
vs.
WELLS FARGO & COMPANY, a Corporation, Defendant.

The defendant demurs to plaintiff's complaint and as a ground of demurrer thereto states:

That said complaint does not state facts sufficient to constitute a cause of action.

Wherefore defendant asks for a judgment therein in its favor for its costs.

PLATT & GIBBONS,
Attorneys for Defendant.

(Indorsed:) Original No. 1815. In the District Court of the Sixth Judicial District, State of Nevada in and for the County of Humboldt. State of Nevada, Plaintiff, vs. Wells Fargo & Company, a Corporation, Defendant. Demurrer. Filed Apr. 3, 1911. J. W. Davey, Clerk. Platt & Gibbons, Reno & Carson City, Nevada, Attorneys for Defendant.

6 No. 1815.

THE STATE OF NEVADA, Plaintiff,

vs.

WELLS FARGO & COMPANY, a Corporation, Defendant.

J. A. Callahan Esq., attorney for plaintiff and L. . Gibbons Esq., of counsel for defendant being present in Court: In accordance with the stipulation on file herein, it is ordered that Defendant's demurrer to plaintiff's complaint be and the same is hereby overruled, and that defendant have thirty days from the . hereof to file its answer to the complaint herein.

STATE OF NEVADA,
County of Humboldt, ss:

I, J. W. Davey, Clerk of the Sixth Judicial District Court of the State of Nevada, in and for the County of Humboldt, do hereby certify, that the foregoing is a full, true and correct copy of an order of the above named Court in the above entitled action, as the same appears at page 191 of book "O" of the minutes of said Court now in my custody, of date April 25th, A. D. 19 .

In witness whereof I have hereunto set my hand and affixed the seal of said Court this 9th day of December, A. D. 1913.

[SEAL.] J. W. DAVE . . rk,
By JAMES RITCHIE, *Deputy.*

7 In the Second Judicial District Court of the State of Nevada in and for the County of Washoe.

No. —.

THE STATE OF NEVADA, Plain...

vs.

WELLS, FARGO & COMPANY, Defen. ..nt.

Answer.

Defendant answers plaintiff's complain' herein, and,

I.

Admits that — all times in complaint mentioned, defendant was a corporation organized and existing under the laws of the State of Colorado, but denies that defendant is organized . existent u' the laws of Arizona.

II.

Denies that between the first Monday in Janu.. .. .e second Monday in August, 1910, or at either of sa'd dates, or at any time

between said dates, or at all, the property described in the complaint herein was within the County of Humboldt, State of Nevada, and denies that said described property was at any of said dates subject to taxation by said County Assessor of Humboldt County, or by any official, or by the State of Nevada; and further denies that this defendant was subject to or liable for any tax by the State of Nevada, for and on account of the property described in said complaint.

Admits that this defendant is the owner of the right described in said complaint and therein called property and in that connection this defendant alleges that it is authorized by its charter to carry express matters between and among the different States of the United States, and to engage in interstate commerce, and that by virtue of said charter, and by virtue of the Laws of the United States, permitting and authorizing it to engage in interstate commerce, this defendant is the owner and possessor of said described right and not otherwise.

Denies that said described property was duly, or at all, assessed to said defendant; admits that an assessment in form was entered against defendant on account of said property, but denies that said assessment was made by the County Assessor of Humboldt County, and further states that under the laws of the State of Nevada, and of the United States, said described property is not subject to taxation by the State of Nevada, and further avers that said assessment and taxation againts defendant and said property was made without any authority of law whatsoever; and further alleges that said assessment and taxation is null, void, and of no force or effect, for the reason that the same was not made by the Assessor of the County of Humboldt, that there is no law of the State of Nevada authorizing it, and that the same is contrary to the constitution of the United States, and contrary thereto in this, that it attempts to levy a tax upon this defendant for the right of engaging in interstate commerce, and imposes a tax upon the right of defendant to engage in interstate commerce.

Denies that upon the property described in said complaint, there was duly, or at all, levied all or any of the taxes described in said complaint.

And for a further, separate and distinct defense to this action, defendant alleges.

I.

That the County Assessor did not make the assessment set forth in the complaint herein, or place any valuation whatever upon the same, but the same was made by the State Board of Assessors at the City of Carson, State of Nevada, in the month of January, 1910, and under the laws and statutes of the State of Nevada, it was the legal duty of the County Assessor of said Humboldt County to enter in his books the assessment so made by said State Board of Assessors, and that under said laws, Said County Assessor

has no authority to place a greater or less valuation upon said property so assessed by said State Board of Assessors.

That said State Board of Assessors made said assessment under and by virtue of the terms and provisions of Section One of "An Act to amend an Act entitled 'An Act to provide for a more uniform valuation and assessment of property in this State,' approved March 16th, 1901," approved March 13, 1903, and not otherwise, or at all.

That said law last above referred to is null and void, and contrary to the constitution of the State of Nevada, in this, that it attempts to delegate to said State Board of Assessors the power or duty of determining or ascertaining what property shall be assessed by it, and allows and permits said Board to use its discretion as to whether or not it shall assess any or all property in the State of Nevada, and therein is null and void in that, it attempts to delegate the taxing power of the State of Nevada.

And for a further, separate and distinct defense to said action, this defendant alleges.

I.

That *is it* and was at all the time- herein mentioned, a corporation organized under the laws of the State of Colorado, and engaged in the Express business in carrying express matter from the
10 State of Nevada into the different States of the Union, and from the different States of the Union into the State of Nevada, and at all times herein mentioned, has been and now is engaged in interstate commerce in the State of Nevada, and carried express matter in course of transit from the State of Nevada into other States of the United States, and from other States into the State of Nevada, and transacted its said interstate business over the railroad mileage, and upon the railroad track described in the complaint herein, and that at all times herein mentioned, this defendant has used the right of property described in the complaint herein for the purpose of conducting its said interstate business.

II.

That the assessment and taxes described in the complaint, were made, levied, and imposed upon the right of this defendant to conduct and transact its said interstate business, over and along the said railroad track and railway lines and systems named in said complaint.

III.

That there is no law of the State of Nevada authorizing the State Board of Assessors, or any officer of the State of Nevada, or of the County of Humboldt, to make, levy or impose the assessment and taxes described in the complaint.

IV.

That the aforesaid law hereinbefore referred to in the preceding

defense to said action, is the law under and by virtue of which the pretended assessment and taxes described in said complaint are made, levied and imposed, and the same were in fact made and levied and by virtue of the provisions of said law, and no other.

11 V.

That said law as enforced and construed, makes no discrimination between the interstate or inter*s*tate business of this defendant, and said assessment and taxes were made, imposed, and levied upon both the right of this defendant to conduct interstate and intrastate business, and are a tax and charge upon this defendant's right to conduct interstate business.

VI.

That said law does not, nor does said assessment or taxes provide any way, manner, or means whereby the receipts of this defendant from its interstate business can be segregated from its intrastate business, and does not provide or set forth any way, manner, or method whatever whereby it can ascertain what portion of said tax or assessment is laid or imposed upon its right to transact intrastate business, or what portion thereof is laid, or imposed upon its right to do interstate business, and the whole thereof is void.

VII.

That said taxes and assessment were made, imposed, and levied, and so intended to be made, imposed, and levied upon both the right of the plaintiff to do interstate business, and its right to do intrastate business, and that said assessment was not made, nor were said taxes levied in accordance or with any reference to the actual business done by defendant over said railway lines, or in reference to the intrastate business done thereover by defendant.

VIII.

That at all times herein mentioned, the interstate business transacted and conducted over said railway lines by defendant, was greatly in excess of the intrastate business done thereover.

12 IX.

That said law and said assessment and said taxes are illegal and void in this, that they are contrary to the Constitution of the United States, and Particularly that provision thereof which provides that the Congress of the United States has the exclusive power and authority "To regulate commerce with foreign nations, and among the several States, and with the Indian Tribes."

Wherefore, this defendant asks for judgment herein in its favor.

PLATT & GIBBONS,
Attorneys for Defendant.

STATE OF NEVADA,
County of Washoe, ss:

L. A. Gibbons, being first duly sworn, deposed and says that he is one of the attorneys for the defendant in the above entitled action; that said defendant is a corporation, and that said defendant's principal place of business is without the State of Nevada, and said defendant is absent from the County of Washoe in which County this affiant resides, and that there are no officers of said corporation within the State of Nevada, and this affiant makes this affidavit on behalf of said defendant; that affiant has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated upon information and behalf, and as to those matters, he believes it to be true.

L. A. GIBBONS.

Subscribed and sworn to before me this 11th day of June, 1912.
N. W. BURTON,
Notary Public in and for the County of Washoe, State of Nevada.

13 (Indorsed:) No. 1815. In the Sixth Judicial District Court of the State of Nevada, in and for the County of Washoe. The State of Nevada, Plaintiff, vs. Wells, Fargo & Company, Defe-dant. Answer. Filed June 12th, 1912. J. W. Davey, Clerk, by James Ritchie, Deputy. Platt & Gibbons, Attorneys for Defendant.

14 In the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt.

THE STATE OF NEVADA, Plaintiff,
vs.
WELLS, FARGO & COMPANY, Defendant.

Reply.

Comes now the plaintiff in the above entitled action and replies to the answer of the defendant in said action, in the manner following:

1. Replying to paragraph 2 of the first defense set forth in said Answer, the plaintiff denies that the property of the defendant described in the complaint is now or at any of the times mentioned in the complaint was exempt from taxation, either under the laws of the State of Nevada, or the United States, and alleged the fact to be that said property is subject to taxation under the laws of the State of Nevada and was so subject to taxation at all times mentioned in the Complaint and in the manner therein specified. The plaintiff denies that said assessment or taxation is in any way null or void for any reason whatsoever, denies that the said assessment or taxation was

made by any other person or body than the assessor of the County of Humboldt, and denies that said assessment or taxation is contrary to law or to the constitution of the United States, denies that said assessment or taxation is an attempt to levy a tax upon the right of the defendant in engaging in interstate commerce and denies that the same imposes a tax upon the right of the defendant to engage in interstate commerce.

2. Replying to paragraph 1 of the second defense set forth in the defendant's Answer, the plaintiff denies that the assessment set forth in the complaint was made by any other person or persons than the County Assessor of Humboldt County, and alleges the fact to be that said assessment and taxation was made by the County Assessor of said County as specified and stated in the complaint. And plaintiff denies that under the laws and statutes of the State of Nevada it was the legal duty of the County Assessor of Humboldt County to enter in his books and assessment made by the State Board of Assessors of the State of Nevada, and denies that under the laws of said State the County Assessor of said County had no authority to place a greater or less valuation upon the said property than that fixed by the State Board of Assessors, and alleges the fact to be that said assessment and taxation was made by the County Assessor of Humboldt County in the manner heretofore stated and set forth in the complaint.

3. Replying to paragraph 1 of the third defense set forth in the defendant's Answer, plaintiff denies that during the time set forth in the complaint the defendant was engaged exclusively in carrying express matter from the state of Nevada into different states of the Union and from different states of the Union into the State of Nevada, and alleges the fact to be that during all of such time the defendant was engaged both in Intrastate and Interstate Commerce.

4. Replying to the second paragraph of the third defense set forth in the defendant's answer, the plaintiff denies that the assessment or taxes described in the complaint were either made, levied or imposed upon the right of the defendant to conduct or engage in interstate business, and alleges the fact to be that said assessment and taxation described in the complaint were made, levied and imposed upon the property of the defendant, described in the complaint.

5. Replying to paragraph three of the third defense set forth in the defendant's answer, the plaintiff denies that the County Assessor of Humboldt County acted without authority of law in making, levying or imposing the assessment or taxes described in the complaint, and alleges the fact to be that each and every act of the said County Assessor set forth in the complaint was authorized under the law of the State of Nevada and in compliance therewith.

6. Replying to the fourth paragraph in the third defense set forth in the defendant's Answer, the plaintiff denies that the law therein mentioned is the law under which or by virtue of which the assessment or taxation was made which is described in the complaint, and alleges the fact to be that the same was made, levied and imposed under the General Revenue Act of the State of Nevada.

7. Replying to the fifth paragraph of the third defense set forth in the defendant's Answer, plaintiff denies that either, the assessment or taxation therein referred to was made, imposed or levied upon the right of the defendant to conduct Interstate or Intrastate business, and denies that the said tax is a tax or charge upon the defendant's right to conduct Interstate business, and alleges the fact to be that the same is a tax upon the defendant's property described in the complaint.

8. Replying to the sixth paragraph in the third defense set forth in the defendant's Answer, the plaintiff denies that said tax or any part thereof is either laid, or imposed upon the defendant's right to transact either Intrastate business or Interstate business, and
17 alleges the fact to be that the same is a tax upon the defendant's property described in the complaint.

9. Replying to the seventh paragraph set forth in the third defense in defendant's Answer, the plaintiff denies that the said taxes or assessments were either made, imposed or levied, or were intended either to be made, imposed or levied, upon the right of the defendant to do interstate business, or the right of the defendant to do Intrastate business, and alleges the fact to be that the same is a tax upon the property of the defendant described in the complaint. And plaintiff further denies that said assessment was not made, or that said taxes were not levied in accordance or with any reference to the actual business done by the defendant over said Railway lines, or in reference to Intrastate business done there over by the defendant, and alleges the fact to be that the said tax is a tax upon the property of the defendant described in the complaint.

10. Replying to the ninth paragraph of the third defense set forth in defendant's answer, the plaintiff denies that either the law under which said taxes and assessment were levied or the said assessment or the said taxes is illegal or void in any respect, and denies that either of the same *of* contrary to the Constitution of the United States or any provision of the same.

J. A. CALLAHAN,
District Attorney of Humboldt County, Nevada, and Attorney for Plaintiff.

STATE OF NEVADA,
County of Humboldt, ss:

H. M. Leonard, being first duly sworn deposes and says; that he is now and at all times mentioned in the foregoing Reply has been the duly elected, qualified and acting County Assessor of Humboldt County, Nevada, and makes this verification in behalf of the
18 plaintiff in the foregoing entitled action; that affiant has read the foregoing Reply, and knows the contents thereof and that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters, that he believes it to be true.

H. M. LEONARD.

Subscribed and sworn to before me this 28th day of June, A. D. 1912.

[SEAL.] J. W. DAVEY,
County Clerk and ex-Officio Clerk of the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt.
By JAMES RITCHIE, *Deputy.*

STATE OF NEVADA,
County of Humboldt, ss:

I hereby certify that the foregoing is a full, true and correct copy of the original Reply on file with the Clerk of the above entitled Court in the above entitled action, with all the indorsements thereon.

_____,
Attorney for Plaintiff.

(Indorsed:) No. 1915. In the Sixth Judicial District Court of the State of Nevada, in and for Humboldt County. The State of Nevada, Plaintiff, vs. Wells, Fargo & Company, Defendant. Reply. Filed this 28th day of June, 1912. J. W. Davey, Clerk, by James Ritchie, Deputy. J. A. Callahan, Attorney for Plaintiff.

19 In the District Court of the State of Nevada in and for the Sixth Judicial District, County of Humboldt.

THE STATE OF NEVADA, Plaintiff,
vs.
WELLS, FARGO & COMPANY, a Corporation, Defendant.

The defendant, by leave of the Court first had and obtained files this its amendment to its answer now on file herein:

Add the following to the first further, separate and distinct defense in said answer contained, after the word "Nevada" on line 4 of page 4:

II.

That said law does not provide for any notice to be given this defendant nor does said law give this defendant any opportunity to appear and be heard at the time of making said assessment, and this defendant alleges that it had no notice whatsoever of the meeting of said Board of Assessor- or that said Board would tax this defendant or levy or make any assessment whatsoever upon its property or levy or make the assessment mentioned in the complaint herein and did not have nor was it given any opportunity to be heard at the time of the action of said State Board of Assessors or at any time, and had not and was given no opportunity to protect against said action, and that all the actions of the State Board of Assessors in connection with said assessment and the taxing of this Defendant and of the County Assessor of Humboldt County were without notice to this defendant and that this defendant had nor was it

given any opportunity to be heard at any time relative to
20 said assessment or the levy of said taxes, and that the said law and statute hereinbefore referred to is null and void in that it fails to provide that this defendant be notified of any proposed action by said Board and in that it fails to provide a method whereby this defendant might be given an opportunity to appear and be heard prior to any action on its part in assessing or taxing this defendant.

Add the following further, separate and distinct defense to said answer after the word "Tribes" on page 6, line 27 thereof:

And for a further, separate and distinct defense to said cause of action in said complaint contained this defendant alleges:

I.

That the total property owned by this defendant and situate in the State of Nevada and used by this defendant in the transaction of its business in said State as a going concern, exclusive of real property which is not used as such, amounts to and is the sum of $11,374.67, and that the total property so owned and used by this defendant and situate in the County of Humboldt, amounts to and is the sum of $383.98.

That if the said property so owned and used by this defendant and situate in the County of Humboldt was taxed at the same rate and in the same manner as other property situate in the County of Humboldt and owned by individuals and corporations other than this defendant, the tax so levied and assessed would amount to and be the sum of $[illegible]

That the total tax assessed against this corporation in the State of Nevada, by the State Board of Assessors in the month of January, 1910, and being the assessment referred to in the answer
21 herein and being the assessment under which the taxes herein sued for were levied, amount to and exceed the sum of Ten Thousand Dollars ($10,000).

That at said meeting of the Board of Asssessors said Board assessed this defendant and valued the property used by this defendant at the rate or sum of $300 for every mile of railroad over which this defendant transacted business, and apportion- said assessment or tax to the various counties of the State in accordance with the number of miles of such railroads so situated within said county, and that the tax herein sued for was not otherwise levied or assessed.

That said system of taxation so attempted to be enforced against this defendant is confiscatory and the property of this defendant is taken without due process of law in this that this defendant is assessed for taxes equalling in amount the property owned by it in the State of Nevada, whereas all other property in the State of Nevada is assessed at a much less rate, to wit, at the approximate rate of $2.25 for each hundred dollars of the assessed value of the prop-

erty so *wo*ned by them, and as defendant is informed and believes other property in the State of Nevada is assessed at sixty per cent. of its actual value.

That the laws of the State of Nevada under which said taxes are purported to be assessed and levied, and particularly the law referred to in the first, separate and distinct defense herein as Null and void in that they conflict with and violate the Constitution of the State of Nevada and particularly Section 20 thereof wherein it is provided that the Legislature shall enact No special or local laws for the assessment and collection of taxes for State, County, and Township purposes, and that said laws are further null and
22 void in that they conflict with and violate the Constitution of the United States and particularly the Fourteenth Amendment to said Constitution wherein it is provided that no State shall deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

L. A. GIBBONS,
Attorney for Defendant.

STATE OF NEVADA,
County of Washoe, ss:

L. A. Gibbons, being first duly sworn, deposes and says that he is the attorney for the defendant in the above entitled action; that said defendant is a corporation and that said defendant's principal place of business is without the State of Nevada, and said defendant is absent from the County of Washoe, in which County this affiant resides, and that there are no officers of said corporation within the State of Nevada, and this affiant makes this affidavit on behalf of said corporation; that affiant has read the foregoing amendment to the answer on file herein and knows the content- thereof; that the same is true of his own knowledge except as those matters therein stated on information and belief, and as to those matters, he believ-s it to be true.

L. A. GIBBONS.

Subscribed — sworn to before me this 2nd day of August, 1912.
[NOTARIAL SEAL.] C. F. BURTON,
Notary Public.

(Indorsed:) No. 1815. In the District Court of the Sixth Judicial District, State of Nevada, in and for the County of
23 Humboldt. The State of Nevada, Plaintiff, vs. Wells, Fargo & Company, a Corporation, Defendant. Amendment to Answer. Filed August 5, 1912. J. W. Davey, Clerk. Platt & Gibbons, Carson City and Reno, Nevada, Attorneys for Defendant.

24 In the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt.

THE STATE OF NEVADA, Plaintiff,

vs.

WELLS, FARGO & COMPANY, Defendant.

Reply to Amendments to Answer.

Comes now the plaintiff in the above entitled action and replies to the amendments to the defendant's Answer on file in the above entitled action, as follows, to-wit:

Plaintiff denies that the defendant was given no notice or opportunity to be heard at the time of the action of the State Board of Assessors or of the Board of Equalization of Humboldt County; denies that the action of said State Board of Assessors was without notice to the defendant; denies that the defendant was not given an opportunity to be heard relative to said assessment or levey of the taxes mentioned in said amendment.

The plaintiff denies that the total property owned by the defendant and situate within the State of Nevada, and used by the defendant in the transaction of its business in said State does not exceed the value of $11,374.67, and alleges the fact to be that the value of the property so owned and used by the defendant in said Humboldt County is the sum specified in the complaint. And plaintiff denies that the tax sued for in the complaint was not otherwise levied or assessed than at the meeting of the Board of Assessors of the State of Nevada, and alleges the fact to be that said tax was levied and assessed in the manner set forth in the complaint.

And *pal*intiff denies that the taxes attempted to be enforced against the defendant are confiscatory, denies that the prop-
25 erty of the defendant is taken or sought to be taken without due process of law, denies that the defendant is assessed for taxes equaling the amount of the property owned by it in the State of Nevada, and denies that the taxes so assessed against the defendant are in any way different or not uniform with the taxes levied and assessed against other property within the State of Nevada.

J. A. CALLAHAN,
District Attorney of Humboldt County, Nevada.

STATE OF NEVADA,
County of Humboldt, ss:

H. M. Leonard, being first duly sworn, deposes and says: that he is the County Assessor of Humboldt County, Nevada, and has been such assessor for more than three years last past; that he has read the foregoing reply, and knows the contents thereof and that the same is true of his own knowledge, except as to those matters that are therein stated on information and belief, and as to those

matters, that he believes it to be true, and affiant makes this verification on behalf of the Plaintiff.

H. M. LEONARD.

Subscribed and sworn to before me this 9th day of August, A. D. 1912.

[SEAL.] J. W. DAVEY,
County Clerk and ex-Officio Clerk of the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt.

(Indorsed:) No. 1815. In the Sixth Judicial District Court of the State of Nevada in and for Humboldt County. The State of Nevada, Plaintiff, vs. Wells, Fargo & Company, Defendant. 26 Reply to Amendments to Answer. Filed this 9th day of August, 1912. J. W. Davey, Clerk. J. A. Callahan, Attorney for Plaintiff.

27 In the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt.

THE STATE OF NEVADA, Plaintiff,

vs.

WELLS, FARGO & COMPANY, a Corporation, Defendant.

Finding of Facts and Conclusions of Law.

This cause came on regularly for trial on the 17th day of October, A. D. 1912, before the Court without a Jury, a Jury trial having been duly waived by the parties, and Cleveland H. Baker and J. A. Callahan, appearing as Attorneys for the plaintiff, and L. A. Gibbons, Esq., for the defendant, and from the evidence introduced the Court finds the facts as follows, to-wit:

I.

That for a long time prior to the year A. D. 1910, the defendant was and still is a corporation, organized and existing according to law, under and by virtue of the laws of the State of Colorado, and during all of such time was and still is engaged in the express business, in carrying express matter from the State of Nevada into the different States of the Union and from the different States of the Union into the State of Nevada, and from points within the State of Nevada, to other points within the said State, and during all of such times has been and still — engaged in carrying express matter from points without the State of Nevada, through the State of Nevada, to other points without the State of Nevada, over and on the railroad mileage operated by the Southern

Pacific Company, a Corporation, on that railroad track known as the Central Pacific Railroad, passing through said Humboldt County, which is more particularly described in the Complaint herein.

2.

That during all of such times the said defendant was and a still is the owner of that certain property described as follows, to-wit: The right to carry express and the right to transact all other business, then and there and commonly done and transacted by the Wells, Fargo & Company, over the Railroad mileage operated by the Southern Pacific Company, a Corporation, on that certain Railroad Track known as the Central Pacific Railroad, passing through said Humboldt County, from a point on the Easterly Boundary line thereof, at or near the S. E. Cor. of the N. E. ¼ of the N. E. ¼ of Sec. 28, Tp. 33, N. R. 44 E. of M. D. B. & M. to the Southerly boundary line of said County, at or near a point forty rods easterly from the S. E. Cor. of Sec. 30, Tp. 25 N. R. 39 E. of M. D. B. & M., all within the said County of Humboldt. The railroad mileage of said Southern Pacific Company within the said County of Humboldt, on which the said Wells, Fargo & Company then operated and still operates its said express business is One hundred Forty and Fourteen one-hundredths (140.14) miles, all of the same being a portion of the main line of the said Southern Pacific Company, and a portion of the main line of the said Wells, Fargo & Company's business.

3.

That in the month of January A. D. 1910, the State Board of Assessors of the State of Nevada, at Carson City, at a duly and lawfully organized meeting of said Board, fix- a valuation for taxable purposes of the said property of the defendant, at the rate of $300.00 per mile for each and every mile of Railroad on the main line of said Southern Pacific Company, over which the said defendant carried and conducted its said express business.

4.

That after the said meeting of the said State Board of Assessors, and between the first Monday in January and the second Monday in August, A. D. 1910, in the County of Humboldt, in the State of Nevada, H. M. Leonard, then and there being County Assessor of said County, did duly assess and put down on an assessment roll all the real and personal property in said County, subject to taxation, and the said assessment roll was afterwards submitted to the Board of Equalization of said County, and was by said Board duly equalized as provided by law.

5.

That said Wells, Fargo & Company, was then and there the owner of, and that there was duly assessed to it the above described

personal property, and that upon such property there had been duly levied for the fiscal year, A. D. 1910, a State tax of $252.25, a County tax of $365.77, and a school tax on the County High School of Humboldt County, Nevada, of $42.04, and a Winnemucca Town tax on the town of Winnemucca, Humboldt County, Nevada, of $4.21, and a Lovelock fire bond tax on the fire bonds of Lovelock, Humboldt County, Nevada, of $.60, and a Lovelock town tax for the town of Lovelock, Humboldt County, Nevada, of $.75, and a Lovelock Sewer Bond tax for the sewer bonds of the town of Lovelock, Humboldt County, Nevada, of $1.05, and a Lovelock Sewer Interest Tax on the interest on the Lovelock sewer bonds of Lovelock, Humboldt County, Nevada, of $1.35, and Mill City Special School Tax for the public schools of Mill City, Humboldt County, Nevada, of $26.52, amounting in the whole to six Hundred Ninety-four Dollars and Fifty-three Cents, ($694.53) all of which was due and unpaid at the time of the commencement of said action, namely the 27th day of February, A. D. 1911.

6.

That the plaintiff should have judgment against the defendant, Wells, Fargo & Company, in the sum of $694.53, the tax due on said personal property, and ten per cent damages for the non-payment thereof at the time the same became due, as required by law, and an additional penalty of twenty-five per centum, also required by law, and for all of the plaintiff's costs and disbursements incurred in said action.

As a conclusion of law from the foregoing facts, the Court finds that the plaintiff is entitled to recover judgment against the defendant for the sum of $694.53, the tax due on said personal property, and for 10% thereof as damages for the non-payment of said taxes at the time as required by law, and the additional penalty of 25%, also required by law, amounting in all to the sum of $937.61, together with the plaintiff's costs and disbursements of suit, and it is ordered that Judgment be entered accordingly.

Dated this 8th day of December A. D. 1913.

EDW. A. DUCKER,
District Judge of Said Court.

(Indorsed:) No. 1815. In the Sixth Judicial District Court of the State of Nevada in and for Humboldt County. The State of Nevada, Plaintiff, vs. Wells, Fargo & Company, a Corporation, Defendant. Findings of Fact and Conclusions of Law. Filed this 9th day of December, 1913. J. W. Davey, Clerk, by James Ritchie, Deputy.

31 In the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt.

THE STATE OF NEVADA, Plaintiff,

vs.

WELLS, FARGO & COMPANY, a Corporation, Defendant.

Judgment.

This cause came on regularly for trial on the 17th day of October, A. D. 1912, Cleveland H. Baker and J. A. Callahan, as Counsel, for plaintiff, and L. A. Gibbons, Esq., Counsel for the defendant. A trial by jury having been waived by the parties, the cause was tried before the Court without a jury, whereupon witnesses on the part of the plaintiff and defendant were duly sworn and examined, and documentary evidence introduced by the respective parties and the evidence being closed, the case was submitted to the Court for consideration and decision; and after deliberation thereon, the Court filed its Decision in writing, also its Finding of Facts and Conclusions of Law, in writing, and ordered that judgment be entered herein in favor of the plaintiff and against the defendant, Wells, Fargo & Company, in accordance therewith.

Wherefore, by reason of the law and the findings aforesaid it is Ordered, Adjudged and Decreed, that the State of Nevada, the plaintiff herein, do have and recover from the said Wells, Fargo & Company, the defendant herein, the sum of Nine Hundred Thirty-seven Dollars and Sixty-one Cents, ($937.61) together with interest thereon at the rate of 7% per annum from the date hereof until paid, and it is further ordered that the said plaintiff recover of and from the said defendant, the plaintiff's costs and dis-

32 bursements incurred in this action amounting to the sum of $52.00 making a total judgment in favor of the said plaintiff and against the said defendant in the sum of $989.61.

Dated this 8th day of December, A. D. 1913.

EDW. A. DUCKER,
District Judge of said Court.

(Indorsed:) No. 1815. In the Sixth Judicial District Court of the State of Nevada in and for Humboldt County. The State of Nevada, Plaintiff, vs. Wells, Fargo & Company, a Corporation, Defendant. Judgment. Filed this 9th day of December, 1913. J. W. Davey, Clerk, by James Ritchie Deputy.

(Indorsed:) Recorded this 9th day of December, A. D. 1913, in Book E of Judgments, at page 243. J. W. Davey, Clerk, by James Ritchie, Deputy.

33 In the Sixth Judicial District Court of the State of Nevada in *in* and for the County of Humboldt.

No. 1815.

THE STATE OF NEVADA, Plaintiff,

vs.

WELLS, FARGO & COMPANY, a Corporation, Defendant.

Certificate to Judgment Roll.

I, the undersigned, County Clerk of the County of Humboldt, State of Nevada, and ex-officio Clerk of the District Court of said State, in and for said County, do hereby certify the foregoing to be a true copy of the judgment entered in the above entitled action, and recorded in Judgment Book E of said Court, at page 243. And I further certify that the foregoing papers, hereto annexed, constitute the Judgment Roll in said action.

Witness my hand and the seal of said Court this 9th day of December A. D. 1913.

[SEAL.]

J. W. DAVEY, *Clerk*,
By JAMES RITCHIE, *Deputy*.

(Indorsed:) No. 1815. In the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt. Judgment Roll. The State of Nevada, Plaintiff, vs. Wells, Fargo & Company, a Corporation, Defendant. Filed this 9th day of December A. D. 1913. J. W. Davey, Clerk, by James Ritchie, Deputy Clerk.

34 In the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt.

No. 1815.

STATE OF NEVADA, Plaintiff,

vs.

WELLS, FARGO & COMPANY, a Corporation, Defendant.

Notice.

To the Above Entitled Court and the Judge Thereof; to the Clerk of the Above Entitled Court; to the Plaintiff Herein, and to J. A. Cailahan and George B. Thatcher, Attorney General, Its Attorneys:

You will please take notice that the defendant in the above entitled action intends to move the above mentioned Court to set aside the findings and decision in said action, and that a new trial therein be granted and had.

Said Motion will be made upon the following grounds, to-wit:

I.

Insufficiency of the evidence to justify the decision of the Court.

II.

That the decision of the Court is against law.

III.

Errors in law occurring at the trial and excepted to by the defendant.

Said motion will be made upon the minutes of the Court.

L. A. GIBBONS,
Attorney for Defendant.

35 (Indorsed:) Original No. 1815. In the Sixth Judicial District Court of the State of Nevada in and for Humboldt County. State of Nevada, Plaintiff, vs. Wells, Fargo & Company, a Corporation, Defendant. Notice. Service of the within after filing by copy, admitted December 9th, 1913. J. A. Callahan, one of the attorneys for plaintiff. Filed this 9th day of December, 1913. J. W. Davey, Clerk, by James Ritchie, Deputy. Hoyt & Gibbons, Reno, Nevada, Attorneys for Defendant.

36 In the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt.

Tuesday, January 20th, A. D. 1914.

A session of Court is held this day at ten o'clock A. M.

Present: Hon. Edw. Ducker, District Judge; J. W. Davey, Clerk, and S. G. Lamb, Sheriff.

No. 1815.

THE STATE OF NEVADA, Plaintiff,
vs.
WELLS, FARGO & COMPANY, a Corporation, Defendant.

J. A. Callahan, Esq., of counsel for plaintiff, and L. A. Gibbons, Esq., of counsel for defendant being present in Court; counsel for defendant requested of the Court that the findings heretofore made and filed herein by the Court be corrected and modified to the extent that the said Court make herein findings of fact upon all the issues presented by the pleadings herein, and particularly that it make findings of fact upon the affirmative allegations contained in defendant's answer and amendment thereto, and thereafter, after argument by the respective counsel, the motion was submitted for decision and the Court ordered: that defendant's request that the findings of fact herein be corrected and modified by said Court to the extent that the

said Court make findings of fact as to the value of the physical property of defendant, in the County of Humboldt, and State of Nevada, be overruled and denied, and that defendant's exceptions and request for additional findings be overruled and denied, to which ruling of the Court counsel for defendant duly excepted.

37 In the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt.

No. 1815.

THE STATE OF NEVADA, Plaintiff,
vs.
WELLS, FARGO & COMPANY, a Corporation, Defendant.

Defendant having filed herein within the time required by law, its intention to move for a new trial herein upon the minutes of the Court, and said motion for a new trial coming on regularly for hearing, J. A. Callahan, Esq., appearing for the plaintiff and L. A. Gibbons, Esq., appearing for the defendant, said defendant in open Court moved the said Court to grant said defendant a new trial in the above entitled action upon all the grounds set forth in its notice of intention to move for a new trial heretofore filed herein, and on said motion the defendant referred to and used, and the Court considered the documentary evidence in the case, the stenographic notes or report of the testimony in the case and the records of The Court, whereupon said motion was argued to the Court and being by the Court duly considered, and counsel for both parties waiving the necessity of the Court filing herein a written decision, and said motion having been duly submitted to the Court for its decision:

Now, therefore, it is here by the Court ordered, adjudged and decreed that defendant's said motion for a new trial herein be and the same is hereby denied, for the reasons set forth in the opinion of the Court heretofore filed herein at the time said cause was decided by said Court. It was stipulated by counsel that no further opinion need be rendered by the Court on the order denying the motion for a new trial.

38 In the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt.

No. 1815.

THE STATE OF NEVADA, Plaintiff,
vs.
WELLS, FARGO & COMPANY, a Corporation, Defendant.

By stipulation of the attorneys for the respective parties made and entered into in open Court; it is ordered that defendant have and it is hereby given thirty days from and after the date hereof within which time to prepare, serve and file its statement on appeal from the

order denying defendant's motion for a new trial herein and from the judgment herein, one statement on appeal to serve for both said appeals in accordance with section 5332 of the Revised Laws of Nevada.

39 In the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt.

STATE OF NEVADA, Plaintiff,

vs.

WELLS, FARGO & COMPANY, Defendant.

Notice.

To the above named Plaintiff; to the Clerk of the above named Court, and to J. A. Callahan, District Attorney of the County of Humboldt, and Hon. George B. Thatcher, Attorney General of the State of Nevada, Attorneys for Plaintiff:

You, and each of you, will please take notice,

That the defendant in the above entitled cause hereby appeals to the Supreme Court of the State of Nevada from the final judgment entered in the above entitled cause in favor of the plaintiff and against the said defendant, and from the whole thereof, and also from the order denying said Defendant's Motion for a New Trial made and entered in the Minutes of said Court on the 20th day of January, 1914.

Dated this 17th day of March, 1914.

Respectfully,

L. A. GIBBONS,
HOYT, GIBBONS & FRENCH,
Attorneys for said Defendant and Appellant.

(Indorsed:) Original. No. 1815. In the Sixth Judicial District Court of the State of Nevada, in and for Humboldt County.
40 State of Nevada, Plaintiff, vs. Wells, Fargo & Company, Defendant. Notice. Filed this 18th day of March, 1914. J. W. Davey, Clerk. Hoyt, Gibbons & French, Reno, Nevada, Attorneys for Defendant & Appellant.

41 In the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt.

STATE OF NEVADA, Plaintiff,

vs.

WELLS, FARGO & COMPANY, a Corporation, Defendant.

Whereas, the defendant in the above entitled action has appealed to the Supreme Court of the state of Nevada from a judgment made

and entered against it in said action in said District Court in favor of the plaintiff in said action for Nine Hundred and Thirty-seven and 61/100 ($937.61) Dollars, gold coin of the United States, and Fifty-two ($52.00) Dollars, costs of suit, and from the whole thereof; and also from the order refusing and denying said defendant's motion for a new trial, said order being made and entered in the Minutes of said Court January 20th, 1914;

Now, therefore, in consideration of the premises and of such appeal, the undersigned, United States Fidelity & Guaranty Company, a corporation, authorized by its articles of incorporation to execute this undertaking, and further authorized and qualified under the laws of the State of Nevada to do business in this State, said corporation having fully complied with all the laws of the State of Nevada in order that this undertaking might be executed by it, does hereby undertake and promise on the part of the appellant that the said appellant will pay all damages and costs which may be awarded against it on said appeal, not exceeding the sum of Three Hundred ($300.00) Dollars, to which amount said corporation acknowledges itself bound; and

42 Whereas, The appellant is desirous of staying the execution of said judgment so appealed from, said United States Fidelity & Guaranty Company, a corporation, does further, in consideration thereof and of the premises, undertake and promise, and does acknowledge itself further bound in the further sum of Two Thousand ($2000.00) Dollars, Gold coin of the United States, being double the amount named in the said judgment; that if the said judgment appealed from, or any part thereof, be affirmed, the said appellant shall pay the amount directed to be paid by the judgment or order, or the part of such judgment as to which the judgment or order shall be affirmed, if affirmed only in part, and all damages and costs which shall be awarded against the appellant upon the appeal.

In Witness Whereof, said United States Fidelity & Guaranty Company, a corporation, has caused this undertaking to be executed by its proper officers hereunto duly authorized.

By March 18th, 1914.

[CORPORATE SEAL.] UNITED STATES FIDELITY & GUARANTY CO.,
By C. R. CATER,
By ROBERT PRICE,
Its Attorneys in Fact.

(Indorsed:) Original. No. 1815. In the Sixth Judicial District Court of the State of Nevada, In and for Humboldt County. State of Nevada, Plaintiff, vs. Wells, Fargo & Company, a corporation, Defendant. Undertaking. Filed this 19th day of March, 1914. J. W. Davey, Clerk. Hoyt Gibbons & French, Reno, Nevada, Attorneys for Defendant.

43 In the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt.

STATE OF NEVADA, Plaintiff,
vs.
WELLS, FARGO & COMPANY, Defendant.

Stipulation.

It is hereby stipulated that notice of appeal from the order denying Defendant's Motion for a New Trial herein, and from the final Judgment herein, was served on the above named plaintiff and its attorneys on the 19th day of March, 1914, and that an undertaking in due and proper form and amount, both for costs and staying the execution of the judgment on appeal has been filed herein.

GEORGE B. THATCHER AND
J. A. CALLAHAN,
Attorneys for Said Plaintiff.

(Indorsed:) Original. No. 1815. In the Sixth Judicial District Court of the State of Nevada, in and for Humboldt County. State of Nevada, Plaintiff, vs. Wells, Fargo & Company, Defendant. Stipulation. Filed this 20th day of March, 1914. J. W. Davey, Clerk, by James Ritchie, Deputy. Hoyt & Gibbons, Reno, Nevada, Attorneys for Defendant.

44 In the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt.

No. 1815.

STATE OF NEVADA, Plaintiff,
vs.
WELLS, FARGO & COMPANY, a Corporation, Defendant.

Defendant's Proposed Statement on Appeal from Order Denying New Trial and from Final Judgment.

Hon. George B. Thatcher, Attorney General of the State of Nevada, and Hon. J. A. Callahan, District Attorney of the County of Humboldt, Attorneys for Plaintiff.

L. A. Gibbons, Esq., Messrs. Hoyt, Gibbons & French, Attorneys for Defendant.

Bill of Exceptions.

Filed March 13th, A. D. 1914.

J. W. DAVEY, *Clerk.*
By JAMES RITCHIE, *Deputy.*

Filed February 26th, 1914. J. W. Davey, Clerk, by James Ritchie, Deputy.

45 In the Sixth Judicial District Court of the State of Nevada, in and for the County of Humboldt.

THE STATE OF NEVADA, Plaintiff,
vs.
WELLS, FARGO & COMPANY, a Corporation, Defendant.

Statement on Appeal.

Be it remembered, that this cause came on regularly for trial before the Court, Hon. E. A Ducker, presiding, without a jury, a jury trial being waived by the respective parties; J. A. Callahan, Esq., District Attorney of Humboldt County, and Hon. Cleve Baker, then Attorney General of the State of Nevada, appearing as attorneys for the plaintiff, and L. A. Gibbons appearing as attorney for the defendant, and thereupon the following proceedings were had and taken:

46 In the Sixth Judicial District Court of the State of Nevada in and for Humboldt County.

THE STATE OF NEVADA, Plaintiff,
vs.
WELLS, FARGO & COMPANY, a Corporation, Defendant.

Before Hon. E. A. Ducker, District Judge.

Tried October 17th and 18th, 1912.

Appearances:

J. A. Callahan, Esq., and Hon. Cleve Baker, for the Plaintiff.
L. A. Gibbons, Esq., for the Defendant.
A. R. Shewalter, Official Reporter pro tempore.

47 In the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt.

No. 1815.

THE STATE OF NEVADA, Plaintiff,
vs.
WELLS, FARGO & COMPANY, a Corporation, Defendant.

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48 In the Sixth Judicial District Court of the State of Nevada in and for the County of Humbolt.

THE STATE OF NEVADA, Plaintiff,
vs.
WELLS, FARGO & COMPANY, a Corporation, Defendant.

Be it remembered that the above entitled action came on regularly to be heard before his Honor, Hon. Edward A. Ducker, Judge of the above entitled Court, sitting without a jury, on Thursday the 17th day of October, A. D. 1912, at the hour of ten o'clock A. M. of said day. The Plaintiff was represented by J. A. Callahan, Esq., District Attorney of Humboldt County, and Hon. Cleve Baker, Attorney General of the State of Nevada, The Defendant was represented by L. A. Gibbons, Esq.

The Court: This is the time set for the trial of the case of State of Nevada, plaintiff against Wells, Fargo & Company, defendant, and is also the time set for the hearing of a demurrer filed by the defendant in the case of State of Nevada against Wells, Fargo & Company, defendant. Are the parties ready for trial in the action first named?

49 Mr. Callahan: May it please the court, on the part of the plaintiff, I ask that Attorney General Baker be entered of record as attorney for the plaintiff to assist in the trial of the case, on behalf of Plaintiff?

The Court: On motion of J. A. Callahan, Esq., enter the order Mr. Clerk that Cleve L. Baker, the Attorney General of the State, be entered as attorney for the plaintiff. In both cases Mr. Callahan?

Mr. Callahan: Yes, in both cases your Honor.

The Court: In both cases.

Mr. Gibbons: May I ask that an order be entered naming L. A. Gibbons as attorney for defendant in both cases in place of Platt & Gibbons—as the attorney for the defendant in both cases in place of Platt & Gibbons.

The Court: In their stead?

Mr. Gibbons: In their stead—yes.

Mr. Callahan: In reply to the statement of the Court as to whether the parties are ready for trial, I wish to say that plaintiff is ready with this exception.

Mr. Baker and Mr. Shaughnessy are here from Carson City, and both gentlemen are prepared to give very valuable aid both in matters of law governing the case, and also the facts, and we have not yet had time to consult, having met only a few minutes before the hour of ten o'clock this morning, and we would like until the noon recess in which to consult as to the trial of the case, before starting in?

The Court: Any objection to that Mr. Gibbons?

50 Mr. Gibbons: I have no objection. I suppose the other counsel will afford me the same privilege if during the trial, I should desire to consult with myself.

The Court: Do you *reside* to make any disposition, in the second case, wherein the demurrer is pending?

Mr. Gibbons: Let that go over until after the trial, and then we can come to some agreement as to the disposition of the demurrer at that time.

Mr. Callahan: We want to dispose of it in some way. We suppose the matter will be submitted, and we want to have it *deposed* of later.

The Court: You may enter the order Mr. Clerk that both cases be continued until two o'clock this afternoon—the trial of the first case, and the hearing of the demurrer in the second case. Anything further then?

Mr. Callahan: No.

The Court: Court will be in recess until two o'clock this afternoon.

51 Afternoon Session.

October 17th, A. D. 1912—2 o'clock.

The Court: In the case of the State of Nevada against Wells, Fargo & Company, you may enter the order Mr. Clerk, that Mrs. A. R. Shewalter be appointed and sworn as the reporter pro tempore

to report all of the proceedings and testimony in the case, and that her per diem be paid by the parties each day in equal parts.

(A. R. Shewalter sworn by the Clerk as above directed.)

The Court: Are you ready to proceed gentlemen?

Mr. Callahan: We are ready to proceed on the part of the State.

The Court: Are you ready on the part of the defendant?

Mr. Gibbons: We are ready.

The Court: You may proceed, gentlemen.

Mr. Callahan: I will hand your Honer the original pleadings in the action, and I will read from the copies.

The complaint in this action reads as follows:

(Complaint read.)

The answer reads as follows:

(Answer read.)

Mr. Gibbons: Just a minute. I desire to state that I wish to have a formal order entered giving me permission to file that answer, and of course Mr. Callahan will consent to it. You know I wrote
52 you and asked if you had any objection to me filing that answer, and you said there were none. There was no formal order of Court permitting it, but I will ask your Honer to enter such an order authorizing it so that the record can be kept straight. I did not come up to get that formal order inasmuch as Mr. Callahan had not any objection to me filing it, and I would like to have the record now show that it was filed by order of Court.

The Court: Is that correct Mr. Callahan?

Mr. Callahan: That is correct.

The Court: Do you wish me to make the order giving you leave to file it now?

Mr. Gibbons: To file the amended answer as of the date filed.

The Court: You may enter the order Mr. Clerk, that the amended answer heretofore filed was filed by leave of Court. You may proceed.

Mr. Callahan: The answer is signed by L. A. Gibbons, attorney for the defendant, and duly verified.

The reply reads as follows:

(Reply read.)

Mr. Callahan: It is not the intention of the plaintiff to deny that the State Board of Assessors, at their meeting of January, 1910 placed a valuation upon this property of three hundred dollars per mile; it is the intention of the plaintiff to admit that fact. And it is the intention of the plaintiff to admit that the Assessor of
53 Humboldt County accepted that figure as the value of the property belonging to the defendant company.

Mr. Gibbons: In other words you confirmed, ratified and approved the action of the State Board of Assessors.

Mr. Callahan: No, sir, not exactly that. But that the County Assessors then after that action was taken by the State Board of Assessors, did every act necessary, for him to do in assessing the property. That will be our position. I simply wish to make this comment here upon a portion of this reply, as the reply here seems to deny that any other excepting the County Assessor made the as-

sessment. We will contend that the County Assessor did in fact make the assessment, but we are not going to deny that the State Board of Assessors that met in January did also place a valuation upon the Defendant's property.

Mr. Baker: May it please the Court to sustain that position, and make it clear to your Honor, we may say perhaps there has been some confusion arisen by the Legislature, and by the Courts as to the word *assessor*, as to whether it is placing a valuation itself upon the property, or whether it is the act of imposing that tax, and all of the necessary steps that are taken necessary to colle-t it, or whether it is a noun, or a verb, it is used and has been used interchangeably, and the position that we take—that the State takes in this case, is that the valuation upon the Wells, Fargo Property in the State was placed by the State Board of Assessors,
and that the a-assessor of each county are bound by that
54 valuation, and cannot change it. That it is the duty of
the assessors to assess the property, that the assessor shall assess and enter its true number on the instrument, carrying out and placing that valuation upon the property, and they have done so, but that the State Board of Assessors by placing a uniform valuation on the property, and in that sense it assessed the property.

Mr. Gibbons: In other words the State Board of Assessors placed the valuation upon the property, and under the law the County Assessors cannot change that valuation, but that the County Assessor performs the ministerial act of making that assessment of fact, and entering it upon his books.

Mr. Callahan: And also by assessing it in the same manner in which real property is assessed, and he goes through the same channel as he does in assessing other property, But so your Honor may understand our position and the case may proceed, we simply make this comment at this time.

The Court: Very well, I understand.

Mr. Callahan: Then follows the verification on the reply.

We ask that this instrument be marked as Plaintiff's Exhibit "A" for identification?

The Court: For identification.

Mr. Callahan: Yes.

The Court: It may be marked as Plaintiff's Exhibit "A"
55 for identification.

(So marked by the Clerk Plaintiff's Exhibit "A" for identification.)

Mr. Callahan: We now offer in evidence Plaintiff's Exhibit "A" as the delinquent List of Taxes in Humboldt County, Nevada, for the year 1910, as certified by the County Auditor of this County to the District Attorney of this County; that it is the original Delinquent List referred to which is referred to in Sections 3657 and 3658 of the Revised Laws of 1911, and specifying therein the taxes referred to in the plaintiff's complaint.

Mr. Gibbons: I object to it upon the ground that it is incompetent, irrelevant and immaterial and does not tend to prove any

of the issue- of the case. And I further object to it upon the ground that it shows upon the face that the property sought to be taxed is the right to transact inter-state business, or inter-state commerce, which the State cannot tax.

Mr. Callahan: May I ask a question, Do you object to it upon the ground that it is not properly identified?

Mr. Gibbons: No, sir.

Mr. Callahan: You waive that objection.

Mr. Gibbons: I waive having the Auditor here to show that. I object to it simply upon the grounds stated, not upon the ground that it is not properly identified.

The Court: You waive the presence of the County Auditor to identify it?

Mr. Gibbons: Yes.

56 The Court: The objection may be overruled, and it may be admitted in evidence and marked Exhibit "A" for Plaintiff in evidence.

Mr. Gibbons: Note an exception upon the grounds stated in the objection.

Mr. Callahan: Call Mr. Leonard.

The Court: Swear Mr. Leonard.

(Mr. H. M. Leonard sworn.)

Exhibit "A" in evidence is as follows:

[Here follows paster table marked p. 57.]

Name.	Real estate.	Personal property.	Total valuation.	High school.	Winne town.	Lovelock fire bond.	Lovelock town.	Lovelock sewer bond.	Lovelock sewer int.	Mill City spc. sch.	
Wells, Fargo & Co.	420 42		420 42	42 04	4 20	60	75	1 05	1 35	26.52	694 53

Wells, Fargo & Co.—That certain property belonging to Wells, Fargo & Co. towit: Right to carry express and right to transact all other business commonly done and transacted by Wells, Fargo & Co., over the railroad mileage operated by the Southern Pacific Company within the County of Humboldt. The railroad mileage of the said Southern Pacific Company within the County of Humboldt on which the said Wells, Fargo & Co. operates their express business is 140.14 miles, at a valuation of $300 per mile, Tax $694.53, penalties $69.45, costs $2, total tax $765.98.

Amount of State and County Tax	618 02
High School	42 04
Winne, Town	4 20
Lovelock Fire Bond	60
" Town	75
" Sewer Bond	1 05
" Sewer Interest	1 35
Mill City Special School	26 52
	694.52
	69 45
	763.98

STATE OF NEVADA,
County of Humboldt, ss.

I, F. G. Hoenstine, County Treasurer and ex-officio Tax Receiver in and for said County, do hereby certify that the foregoing is a full and correct Delinquent tax list for the year 1910, First payment ending December 5th, 1910, containing a list of all property on which taxes for the year 1910 (First Payment) have not been paid at the close of business on the 5th of December, 1910.

F. G. HOENSTINE,
County Treasurer and ex-Officio Tax Receiver Humboldt County, Nevada.

STATE OF NEVADA,
County of Humboldt, ss:

I hereby certify that the foregoing is a full, true and correct list of all persons and property now owing taxes to said State and County for the year 1910, when the delinquent tax—exclusive of Poll Tax and penalties—exceeds the sum of one Hundred dollars ($100.00) Dec. 15", 1910.

S. J. BONNIFIELD,
County Auditor.

Plaintiff's Exhibit A for identification.
Oct. 17, 1912.
J. W. DAVEY, *Clerk.*

State of Nevada vs. Wells, Fargo & Co. No. 1815. Plaintiff's Exhibit "A" in evidence. Filed Oct. 17, A. D. 1912. J. W. Davey, Clerk, by —— ——, Deputy.

58 Testimony of H. M. LEONARD, who, being called, and duly sworn as a witness on behalf of the State, upon his oath, testifies as follows, to-wit:

Direct examination.

Mr. Callahan:

(Q.) Your name is H. M. Leonard?

A. Yes, sir.

Q. You are the duly elected, qualified and acting Assessor of Humboldt County, Nevada, and have been for more than three years last past?

A. I am.

Q. I show you plaintiff's Exhibit "A" in evidence, and ask you to examine the same, and state whether or not you are the County Assessor who assessed the property of the defendant described in the complaint in this action?

Mr. Gibbons: I submit that that question calls for a legal conclusion from the witness as to the very thing in issue in this case as to whether he did assess this property.

Mr. Callahan: I will state this is only preliminary to show that he has performed whatever acts were performed in making this assessment, and not for the purpose of proving actually what he did.

Mr. Baker: As a matter of fact the delinquent list itself is evidence of the fact that the duties have been performed and is prima
59 facie evidence as it stands there that all of the law has been complied with as to the assessment, and it is incumbent upon the defendant to prove it has not been. I take it however the question is more in the nature of a preliminary question more than to test the law.

The Court: Under the statement of the District Attorney that it is merely a preliminary question I will overrule the objection.

Mr. Gibbons: Note an exception upon the grounds stated in the objection.

The Court: The exception may be noted. You may answer the question.

Mr. Callahan: Read the question.

(Reporter reads the question.)

Q. I show you Plaintiff's Exhibit "A" in evidence, and ask you to examine the same, and state whether or not you were the County Assessor who assessed the property of the defendant described in the complaint in this action?

A. I am.

Q. I will ask you to state whether or not you are familiar with the description of the property as stated in the complaint?

A. I am.

Q. I will ask you to state whether or not the property described in the complaint is the same property as that which is stated as the property in Plaintiff's Exhibit "A"?

A. It is.

60 Q. You will notice the column of Plaintiff's Exhibit "A," that the value of the property is entered in the Real Estate column. I will ask you to state whether or not you assessed that property as real estate or as personal property?

A. I assessed it as personal property.

Q. And the fact that the entry is made in the real estate column is due to what?

A. It is a clerical error in copying the assessment.

Mr. Gibbons: I move to strike out the testimony of the witness inasmuch as it is incompetent to offer oral testimony to change the form of an assessment list, or to change the assessment.

The assessment in the sense it has been spoken of here now consists of certain acts of an assessor, which have crystal-ized themselves into substantial evidence, and have been written down and a memorial made of them on paper. I therefore submit it is improper for an assessor to change his assessment in his statement by his verbal testimony—that is to change the assessment which is the record of the assessment.

Mr. Callahan: I think it is practically admitted in the pleadings. The answer contains the admission that the property, or that which is described as property was assessed, and that a form of assessment was gone through in the manner described in the complaint. I believe that is the admission in the answer, and I do not see how the Defendant could be injured by this testimony, in that it is
61 already admitted in the answer that that form of an assessment has been gone through with, but denies that it was in fact an assessment.

Mr. Gibbons: The answer admits that an assessment in form was entered. It admits the assessment that was entered; it does not admit some assessment that is floating around in the air, or parole assessment.

Mr. Callahan: You admit it was assessed as stated in the complaint?

Mr. Gibbons: I admit that an assessment in form was entered against the defendant on account of said property as stated in the answer.

(Further discussion.)

The Court: I think he should be permitted to explain the clerical errors as it occurs in a document in his own office. I would not change the assessment at all. The motion will be denied.

Mr. Gibbons: Note an exception for the reason stated, that the offered testimony is an attempt to change the assessment as made and lettered, and that parole evidence is inadmissible to change, effect, or modify an assessment already made and levied.

Mr. Callahan: That is all.

Cross-examination.

Mr. Gibbons:

(Q.) Mr. Leonard you say you are familiar with the property described in this complaint?

62 A. As well as you can be with property of that kind.

Q. What is that property?

A. Just as I have described it there; that is the only way I can explain it.

Q. You have just described it as you have stated, and you say you are familiar with it: What is it?

A. It is the right of Wells Fargo Company to transact an express business in and through the County of Humboldt.

Mr. Gibbons: That is all.

The Court: Is that all?

Mr. Baker: I desire to ask a question or two.

Redirect examination.

Mr. Baker:

(Q.) You can take that paper there Mr. Leonard and see if there is anything else you desire to add in explanation to what you have already answered?

A. Well, I could read that and it would be my answer in full.

Q. You may refresh yourself, and your memory, with any data you may desire?

A. "The right to carry express, and right to transact all other business commonly done and transacted by Wells, Fargo & Company."

(Reading from Exhibit "A" in evidence.)

Mr. Baker: That is all.

62 Recross-examination.

Mr. Gibbons:

(Q.) You said you are familiar with the property: All you know about it is what those words convey to you is it not Mr. Leonard?

A. Yes, sir.

Q. You never saw the property?

A. As much as anybody can see it.

Q. Well, did you ever see it?

A. I have seen part of the business.

Q. Yes, but that is about all any one can know about the property there, the description that is contained therein?

A. Yes, sir.

Q. You did not see that property in the county?

A. It is intangible.

Redirect examination.

Mr. Baker:

(Q.) Did you ever see or know of anybody who ever saw much Wells, Fargo & Company property in this county?

A. I have not found anybody yet.

Mr. Baker: That is all.

Mr. Gibbons: That is all.

The Court: That will be all Mr. Leonard.

Mr. Baker: The state rests.

64 Mr. Gibbons: Mr. Shaughnessy will you please be sworn and take the stand?

(Mr. J. F. Shaughnessy sworn by the Clerk.)

Testimony of J. F. SHAUGHNESSY, who, being called, and duly sworn as a witness on behalf of the Defendant, upon his oath, testifies as follows, to-wit:

Direct examination.

Mr. Gibbons:

(Q.) What is your name?

A. Beg pardon Mr. Gibbons?

Q. I say what is your name?

A. J. F. Shaughnessy.

Q. What official position, if any, do you hold in the State of Nevada?

A. I am a member of the Nevada Railroad Commission.

Q. How long have you been such member?

A. Five years.

Q. Were you a member of the commission in the year 1910?

A. I was—yes, sir.

Q. As such Commissioner did you in January, 1910, furnish to the State Board of Assessors any statement relative to the business of Wells, Fargo & Company, or relative to the taxes of Wells, Fargo & Company?

A. I did—Yes, sir.

65 Q. Have you a copy of that statement?

A. I have a copy here, yes.

Q. Have you a certified copy?

A. No, I have not.

Mr. Baker: I have a certified copy?

Mr. Gibbons: Can I offer this in evidence? I suppose you will admit, and it will be admitted that the pamphlet entitled, "State of Nevada, Minutes of the Meeting of the State Board of Assessors at Carson City, January 10th to 15th, 1910," as certified, contains a correct record of what was done at the meeting of the State Board of Assessors in the year 1910 relative to the assessment of Wells, Fargo & Company?

Mr. Baker: Yes.

Mr. Gibbons: And I offer in evidence so much of that book or pamphlet as refers to the proceedings of the State Board of Assessors in reference to the taxation of Wells, Fargo & Company.

Mr. Baker: Any objection to having it all go in?

Mr. Gibbons: No, sir.

Mr. Baker: That would show that the Board met at the time appointed by law, and that the meeting was regular, and in com-

pliance with the law. We intended to offer it in evidence if you did not.

Mr. Gibbons: No objection to it all going in.

The Court: It may be admitted and marked Defendant's Exhibit No. 1.

(So marked by the Clerk as Defendant's Exhibit No. 1.)

66 Mr. Gibbons:

(Q.) Have you the statement that you furnished to the State Board of Assessors that year?

A. The original statement?

Q. Yes, sir.

A. I have not that statement.

Q. You have examined the Minutes of the State Board of Assessors as reported on pages 117 and 118 of Defendant's Exhibit "1" as marked, and does that contain a correct statement?

A. That contains a correct statement.

Q. A copy the State furnished?

A. Yes, sir.

Q. And a copy of the statement furnished?

A. Yes, sir.

Q. Did you prepare that statement Mr. Shaughnessy?

A. I did—yes, sir.

Q. And of course you are familiar with its contents, and what it contains, or what purports to be contained therein, and what it purports to show?

A. I am—yes, sir.

Q. Have you in that (the statement prepared by you) a statement furnished by Wells, Fargo & Company to the Railroad Commission as refer-ed to there?

A. You have reference to that statement as to the net earnings as reported to the Commission are $291,084.85.

Q. Yes, and also the gross earnings?

A. Yes, I have that statement.

Q. You have that statement?

67 A. Yes, sir.

The Court: I would like to have you refer to the statement if you can.

Mr. Gibbons: Page 117 of Exhibit "1" refers to the gross earnings of Wells, Fargo & Company as reported. I will give your Honor Exhibit "1" and then you can follow it.

Q. Is the paper or report which you have handed me a report made by Wells, Fargo & Company to the Railroad Commission of the State of Nevada?

A. It is; upon the request of the Commission.

Q. And do you know whether or not that was made in compliance with any law, or did the Commission request the Wells, Fargo & Company to make such report?

A. It was made upon request of the Railroad Commission, and under the Railroad Commission law, I don't remember the sec-

tion, but we are authorized to call upon companies for special reports.

Q. And it was made in response to your request, or to the Railroad Commission at their request?

A. It was—yes, sir.

Q. Mr. Shaughnessy in Defendant's Exhibit No. 1, on page 117 reference is made to the gross earnings of Wells, Fargo & Company for the calendar year ending December 31st, 1910, as being the sum of $850,000.00. Did you ascertain that fact, or that total from the report which you have handed me?

68 A. I did—yes, sir.

Q. Will you please examine this report and state how you arrived at that calculation?

A. In this report the earnings are reported by stations served in the State of Nevada. These earnings are shown on pages ten and eleven of the special report, furnished by Wells, Fargo & Company upon request of the Railroad Commission.

Q. By the report Mr. Shaughnessy you have in your hands?

A. By the report that I now have in my hand. And the earnings and terminal expenses, and office expenses are subdivided and shown there, and the different stations served by Wells, Fargo & Company, within the State of Nevada. And the intra-state earnings of each station are shown; also the earnings on traffic from without to within the State, and also the earnings from traffic from within to without the State, segregated and shown by stations. And in addition to that the total expense of each station is shown.

Q. Let me interrupt you just a minute. Will you just read one of those lines to the court, so the Court will get the idea of about how that report was made.

A. I will take Winnemucca for example?

Q. Yes.

A. At Winnemucca it shows earnings at Winnemucca Station, that is the intra-state earnings at Winnemucca Station $2,399.74. On traffic forwarded from Winnemucca to others points it shows earnings of $17,543.48; on Traffic received I beg your par-

69 don, the first one should have been received instead of forwarded. On traffic forwarded it shows earnings of &2,282.19, and station oexpenses chargeable at Winnemucca for the year were $3,445.15. Now aggregating the total of all of these earnings brought that sum of $850,000.00, which is under discussion in this proceeding and which are the earnings creditable to the Nevada mileage.

Q. In other words Mr. Shaughnessy in order to arrive at the sum of $850,000.00 you took the aggregate of the sums of money received in the different stations in Nevada from intra-state business, and added to that the moneys received from inter-state business, on business coming from other states into the State of Nevada, and also added to that, and to those sums the moneys received from inter-state business forwarded from Nevada to other states and countries, and adding those three sums together you arrived at the sum of $850,000.00?

A. That is correct—yes, sir.

Q. Which you reported to the State Board of Assessors as being the gross earnings of the Wells, Fargo & Company for the calendar year within the State of Nevada?

A. That is it—yes.

The Court: You arrived at that by adding the three sums together?

A. I arrived at that by adding the three sums together—yes, Judge.

Mr. Gibbons:

(Q.) How did you arrive at the sum of $291,000.00 odd
70 thousand dollars mentioned on page 117 of the Defendant's Exhibit "I"?

A. I *get* your pardon.

(Reporter reads the question.)

Q. How did you arrive at the sum of $291,000.00 odd thousand dollars mentioned on Page 117 of the Defendant's Exhibit "I"?

A. The statement as made on Page 177, the net earnings as reported to the Commission are $291,084.85. That adding and calculation there explains the method of arriving at that. We have on file in our office as reported by the Wells, Fargo & Company, and also by the Railroad Company, copies of all of the contracts of the division of the gross charge as express traffic, comprising the amount that the express Company shall pay to the Railroad for privileges for its transportation, for the transportation of the express business, and that charge will average for transportation known as the railroad privilege about fifty per cent of the express charges.

Q. In other words Mr. Shaughnessy to get it a little plainer, from information contained in these agreements, the amount paid by the Wells, Fargo & Company to the different railroad- averages about fifty per cent of the Wells, Fargo & Company gross receipts and business?

A. Yes, sir, that is the idea exactly. With that idea in mind, and taking the $850,185.68 the gross earnings creditable to the Nevada mileage, we first deduct fifty per cent.

71 Q. That was on account of the Railroad charges?

A. For the railroad charges for transportation. And therefore the amount remaining would be known as the express earnings for the year which is $425,092.84. Now for expenses the only thing that we had before us at that time was the office or terminal expenses reported in this.

Q. On this report here?

A. On this report here that I now have in my hand, which totals $134,007.99. Then that expenses was deducted from the express earnings and that left the net amount of $291,084.85 there. Now that is the method by which that amount of the net earnings was arrived at.

Q. In other words Mr. Shaughnessy you deducted from the

round sum of $850,000.00 one half for the railroad charges; and then from that you deducted the sum reported to you by Wells, Fargo & Company for office expenses, and reach- the figures of $291,000.00 odd Thousand, which in your report to the State Board of Assessors you termed the net profits for the State of Nevada for the period?

A. Yes, sir. I want to say in explanation of these figures, however, that they are not entirely accurate, and I think that now that we have gotten it to an issue where it would be as well to get as near the actual figures as we can. The statement was made up in the first instance on the request of the Chairman of the State Board of Assessors, and it was to give the members of the Board the idea, of, or something near the value of the property. The figures were placed before the Board, and I Don't know just exactly
72 what use was made of them. I know the figures and the amount recommended in that statement was not followed, for instead of placing an eight hundred dollar valuation, or a five hundred dollar valuation per mile, which — recommended therein, the Board after conference arrived at the three hundred dollar valuation per mile. I was just leading up to this—The report states——

Mr. Baker: Let him ask the question as it is more satisfactory.

Mr. Gibbons: I think really I agree with Mr. Baker the Attorney General, but I do not want to interrupt Mr. Shaughnessy, because I have no desire to prevent Mr. Shaughnessy from in any way making any statement he desires or explanation, but really think it would be better if the questions would be put to you, and then answered by you, and then if you have anything further to say I am quite sure it will meet with no objection on my part. I may enter a formal objection, but I have no desire to hamper you in making any explanation you think your duty as an officer of this State prompts you to make.

Q. Now Mr. Shaughnessy the Railroad Commission or you as Railroad Commissioner in your report recommended a capitalization from the net earnings of $291,000.00 odd thousand dollars, on the bases of seven per cent, and the taxation levied upon that basis, and the Board of Assessors did not make such a rate of taxation?

A. No, they did not.

Q. Now figuring it on that basis, what would have been
73 the rate of taxation?

A. Well, it would be the amount stated here.

Q. It would have been the amount stated here in the Commission's report to the Board of Assessors on Page- 117 and 118?

A. Yes.

Q. Of the Defendant's Exhibit No. 1?

A. Yes.

Q. And instead of that the tax was placed at three hundred dollars per mile?

A. Yes, sir.

Q. Do you *not* the aggregate mileage over which the Wells, Fargo & Company carries express at the present time?

Mr. Baker: In this State?
Mr. Gibbons: No.

A. No, but I have it.
Q. You have it?
A. Yes.
Q. Did you have it in 1910?
A. I did—yes, sir.

The Court: In this State you say?
Mr. Gibbons: I beg your pardon?
The Court: In this State you say?
Mr. Gibbons: No, the original market or mileage throughout the world?

Witness:

(A.) Throughout the entire system?

Mr. Gibbons:

(Q.) Throughout the entire system?
A. Yes, sir.
74 Q. You had that in 1910?
A. Yes, sir.

Q. And the basis of taxation upon the net profits of $291,000.00 odd Dollars, or the gross profits of eight hundred and fifty thousand odd dollars, was not figured out upon the bassis of the mileage in the State of Nevada to the entire mileage?
A. No.
Q. Through *with* the Wells, Fargo and Company operates?
A. No, sir, it was not.
Q. And there was no attempt made by you, or by the Board of Assessors, to proportion the amount of business done within the State of Nevada, in the same proportion as the mileage within the State of Nevada bore to the entire mileage over which Wells, Fargo & Company conducts its business?
A. No.
Q. And the tax was not levied upon any such basis, nor was the assessment placed upon any such bases?
A. No, it was not.
Q. Did you at the time you prepared this statement for The State Board of Assessors know that Wells, Fargo & Company was an express Company that was engaged in carrying express in the different States of the Union, as well as in the State of Nevada?
A. I did—Yes, sir.
Q. And did you, or did you know, that it had property in the different States of the Union, which it used for the purpose
75 of carrying express from one State to another?
A. Yes, sir.
Q. You knew did you not, that it had property in various places,

and investments in various states of the United States, which it used in connection with its system as a whole, for the purpose of carrying express matter into Nevada from other States, and out of Nevada, into other States?

A. Yes, sir.

Q. Did you in furnishing this estimate to the State Board of Assessors, or did the State Board of Assessors in fixing this valuation, attempt to make any deduction on account of the investments of the Company in other states?

Mr. Baker: It does not show the method by which they arrived at the valuation, and I do not believe that it is a proper question to be asked the witness. He was not a member of the Board which made the assessment; he was merely called in by invitation, and not to act, but according to the law to give such data as he might have, just like an assessor or anybody would have a right to call upon any citizen to give data, and he is not responsible for what assessment was made.

Mr. Gibbons: I am not contending he is.

(Further discussion.)

Mr. Baker: I am not going to interpose any objection.

Mr. Gibbons: Read the question.

76 (Reporter reads the question.)

Q. Did you in furnishing this estimate to the State Board of Assessors, or did the State Board of Assessors in fixing this valuation, attempt to make any deduction on account of the investments of the Company in other States?

A. The Railroad Commission did not put any such data as that before the Board for consideration. I cannot say of my own knowledge whether they went into that, or did consider anything of that kind or not.

Mr. Gibbons:

(Q.) You in submitting the report to the State Board of Assessors did not take this matter into consideration?

A. No, sir.

Q. And you know of no data before them which did take it into consideration?

A. I know of none.

Q. The Minutes of the Assessors' meeting show so far as you know, what actually was taken into consideration by the State Board of Assessors do they not?

A. Yes.

Q. Then as I understand your testimony the earnings of the Wells, Fargo & Company on business that was carried from the State of Nevada into other States, and from other states into the State of Nevada was taken in consideration and made a part of the amount which was reported by you to be the earnings of the Wells, Fargo & Company?

A. Yes, sir, there was an inclusion of the inter-state earnings in that report.

77 Q. And that was taken into consideration to the best of

your knowledge by the State Board of Assessors of the State of Nevada.

A. Well, in so far as they considered that. I do not know how much weight that may have had with them, because they did not follow the recommendations made.

Q. Do you know how much actual property, or how much tangible property the Wells, Fargo Company has within this State?

A. I am not aware of the amount they have.

Q. You have no data to figure upon that subject?

A. No, I don't think they reported separately as to the quantity to say, they reported for the system as a whole as to their property.

Q. Yes, I understand. Do you know of any reason why the earnings of the Wells, Fargo Company for the year 1908 should have been taken as a basis for taxing them in the year 1910?

A. No, the only reason that it was taken was that that was the only data we had; there was no other data available at that time.

Q. Well, it would be a fair assumption would it not—that is in your opinion it was a fair assumption that there business would probably be about the same in 1910 as it would be and was in 1908?

A. Yes, sir, we figured that away.

Q. It would not vary much?

A. Yes, sir, we figured that it would run substantially
78 the same.

Q. And you have no other data at hand?

A. That was the last official report we had before us.

Q. Do you have any objection Mr. Shaughnessy, if I offer this report in evidence? Do you have any objection if I would offer it in evidence here?

A. I presume it could be returned sometime?

Q. Yes, it can be withdrawn at any time?

A. It is part of our official records?

Mr. Gibbons: I was going to state that I would offer it in evidence, and if it was desired, it might be withdrawn, and we would stipulate that a certified copy be substituted in its place?

A. Yes, sir. I would like it returned Mr. Gibbons.

Mr. Gibbons: I now offer that report in evidence for the purpose of explaining Mr. Shaughnessy's testimony, it being the report referred to by him in his testimony, and his testimony being incomplete without the report to which he referred.

The Court: That is a report of the Wells, Fargo & Company to the Railroad Commission?

A. Yes, sir.

Mr. Gibbons: Yes, sir.

Mr. Baker: Of course at this time we enter a formal objection to the introduction of this document as being incompetent, irrelevant and immaterial, for the reason that the report was a
79 statement which was made by Wells, Fargo & Company to the Railroad Commission of the State of Nevada, which is in no way in connection with the State Board, of Assessors, as has been shown, and it would not be binding upon the State Board of

Assessors in levying this assessment. I can not see how it will have any particular bearing upon this case. This report was submitted to the Railroad Commission of Nevada. And if the Railroad Commission of Nevada submitted this entire report to the State Board of Assessors, and if the State Board of Assessors as a matter of fact did act upon this report in arriving at their conclusion, then I would think it would probably be material. But as we are desirous that the Court may have all of the light possible on this subject, as we have nothing to conceal, so we just enter the formal objection.

Mr. Gibbons: I might state my reason for offering it. Of course Mr. Shaughnessy has referred to this as being one of the sources from which he got some of the data which he incorporated in his report upon the question of the taxation of Wells, Fargo & Company to the State Board of Assessors. As to whether or not the report of the Railroad Commission was used or referred to by the State Board of Assessors, the minutes will show that it was in the minutes of the Board.

The Court: The objection may be overruled. It may be admitted in evidence and marked as Defendant's Exhibit No. 2, with leave to withdraw it from the files, upon the Filing of a certified copy in its stead.

80 Mr. Baker: May we save an exception to the ruling of the Court upon the grounds stated in the objection.

The Court: Note the exception. Proceed.

Mr. Gibbons:

(Q.) Do you know of any other reason, Than the reasons set forth in the minutes of the meeting of the State Board of Assessors in 1910, why this taxation was placed in the form of a mileage tax?

A. With the idea in view that it would more nearly reach the fair value of the property, and make a better distribution of it, and a better equalization than the previous system.

Q. I notice this matter on Page 117 of the minutes; "It has been suggested by your Chairman that a per mile valuation should be assessed against this Company in order that the various counties of the State may receive their just proportion of taxes."

A. That is true.

Q. That was the principal reason, so far as you know, for the tax assuming a mileage tax was it not?

A. It was—yes, sir.

Q. I have further asked you, I think that the question of a proportionate mileage was not taken into consideration in making this reply?

A. What do you mean by a proportionate mileage?

Q. To proportion the mileage within the State of Nevada as compared to the aggregate mileage over which the express company carries its express?

A. Do you mean by *the* that Mr. Gibbons that we must
81 take that proportion or that ratio and apply it to the whole system as a whole?

Q. Yes.

A. No, that method was not adopted.

Q. I thought I asked you that question before. But of course the earnings as you figured them out in the State of Nevada, they were divided pro rata according to the mileage within the different counties?

A. Well, we took the earnings Mr. Gibbons on the Nevada mileage simply as a measure in finding and for finding a fair value of Wells, Fargo & Company's property within the State. And if you wish me to speak upon that matter of the inclusion of revenues from inter-state commerce and not segregating this prorate of Nevada mileage which you speak of, I will just say that I presume that we should take the mileage prorate of those shipments—those interstate shipments, that is the proportion of mileage within Nevada that it bears to the total shipments and traffic mode, and in that connection we had that in mind when we were asked to make up this statement, and we notified the Chairman of the Board that we were unable to give him an accurate segregation of the earnings of the Nevada mileage by which we measured the value of the property within the State, but we used and included the entire amount of eight hundred and fifty thousand dollars, which included in that the inter-state earnings which would not be unfair for the reason that Express Company had failed to report to us the revenue
82 accruing from all of the traffic which passes through the State. And in that connection our mileage prorate of that great overhead traffic moving across the State would more than over-balance the eight hundred and fifty thousand dollars which we had used. And I therefore think using the Eighty hundred and fifty thousand dollars was in fact a ve-y conservative figure.

Q. I have no doubt but that that is your thought, but the thinking that will decide this case, will be the method that was adopted right then rather than the good intentions of either of the parties, and that is what I am trying to get at in order that both parties may be right.

Mr. Baker: Not the method but whether or not it is a fair tax.

Mr. Gibbons:

(Q.) You say this sum of eight hundred and fifty thousand dollars of net earnings include some———

A. Eight hundred and fifty thousand dollars of gross earning.

Q. You say this sum of eight hundred and fifty thousand dollars of gross earnings includes some interstate business?

A. Yes, sir, they made up in part with the interstate business.

Q. Was not the mass of it inter-state earnings?

A. Yes, sir, it will show the relative proportion—it will show the relative proportion. It will show the intra-state as compared to the inter-state—that headed intra-state as compared to that received and forwarded.

83 Q. As a matter of fact the gross intra-state was $124,-794.12?

A. Yes, sir.

Q. And the amount of inter-state earnings that were included in the gross profit of eight hundred and fifty thousand dollars, was the difference between the $124,794.12 and eight hundred and fifty thousand dollars?

A. That is right.

Q. Do you know what the net inter-state earnings of Wells, Fargo & Company were for the ye-r 1906?

A. No, sir. I do not. No segregation of that express was made to us.

Q. Do you know what the gross intra-state earnings for the year 1910 were?

A. For the year 1910?

Q. Yes, sir, the year in question that the tax was levied?

A. Yes, sir, I think I have that. The gross intra-state earnings in Nevada in the year 1910—that is the year and for the year ending June 30th, 1910, were $79,550.40.

Q. You do not know that the net intra-state earnings of Wells, Fargo & Company for the year 1910 were $6,225.61?

A. No, sir, I did not.

Q. Do you know what the aggregate tax so assessed by the State Board of Assessors for the year 1910 against Wells, Fargo & Company amounted to throughout the State?

A. The State and County?

Q. Yes, the State and County taxes?

84 A. Yes, sir, I have figured that. I think it would aggregate about eleven thousand dollars.

Q. And in round numbers it is about eleven thousand dollars?

A. Yes, sir.

Q. Then if the net intra-state earnings for -he year 1910 were $6,225.61, the tax levied by the State Board of Assessors for the year 1910 would be approximately the entire amount of net profits upon intra-state business?

A. Upon that portion of the intra-state business—yes sir.

Q. And the other tax would be levied upon the inter-state business?

A. Well, it would be levied upon that proportion of the property which is devoted to the handling of interstate traffic but which is within the confines of the State.

Q. But in making that valuation I understood you to say that you did not make any proportional charge as to the relative mileage traversed by a package coming into the State and going out of the State?

A. No, sir, as I explained we were unable to do that.

Q. I just want to get it clear in my mind, and make myself understood. You speak of the property of Well-, Fargo & Company in the State of Nevada, used in its business, both inter-state and intra-state business?

A. Yes, sir.

Q. Do you not know that that property—that the value of

85 that property is $11,374.67?

A. That is the real property?

Q. That is the tangible property?

A. Yes, sir, that might be true. We don't—As I explained before that is not reported to us. The value of the property is reported for the system as a whole.

Q. But when you said you had assumed a figure that this was a fair tax upon the property of Wells, Fargo & Company situated within the State, and also for the interstate business, you did not mean to say it was a fair valuation of the physical property belonging to Wells, Fargo & Company?

A. No, sir. We had all of the property—all of the tangible and intangible in mind.

Q. Did you in making up this report to the State Board of Assessors in any way consider the franchise—to tax the franchise?

A. No, sir, we considered the property tangible and intangible.

Q. But the franchise is not taxable under the laws of the State of Nevada?

A. So I understand.

Q. So this tax according to your report to the Board of Assessors, and according to your understanding when you prepared it, was not in any sense a tax upon the franchise of Wells, Fargo & Company?

A. No, sir.

Q. But an attempt to tax and put a tax upon the property?

86 A. Upon the property.

Q. Upon the property?

A. Yes, sir.

Q. Upon the personal property or the real property?

A. Well, *not* I don't know just how that is designated, whether they are real and personal property.

Q. Real and personal property?

A. Yes, sir. That would be my understanding. I may be misinformed with reference to the technical expression of it.

Q. But I want to understand Mr. Shaughnessy which is true—I am not attempting by any of these questions to put them as catch questions, or anything that way. You may have known that some of these questions were asked for my own information as well as for the purpose of getting them into the record. Did the State Board of Assessors, or do you know whether the Assessors of the various counties have assessed a tax upon the real estate belonging to Wells, Fargo & Company in this State?

A. No, sir, I have no knowledge in reference to it.

Q. You have no knowledge in reference to it?

A. No, sir.

Q. Do you know whether or not they have levied a tax upon the tangible personal property of the Company in the State?

A. No. I do not.

Mr. Gibbons: I think that is all.

Exhibit No. 2 for Defendant reads as follows:

87 *Annual Report of Wells Fargo & Company to State of Nevada for Year Ending June 30, 1908.*

History.

Question No. 1. Name of Company making this Report.

Answer. Wells, Fargo & Company.

Question No. 2. Date of Organization.

Answer. Organized as the Holladay Overland Mail & Express Company, February 5, 1866. Changed name subsequently to Wells, Fargo & Company. Formally approved by Act of Legislature January 26, 1872.

Question No. 3. Under laws of what State or Territory Organized.

Answer. Organized in the then territory, now State of Colorado, by Act entitled: "An Act to incorporate the Holladay Overland Mail and Express Company." Approved February 5, 1866, and Act supplemental thereto approved January 26, 1872.

Question No. 4. If a consolidated company, name the constituent Companies.

Answer. Various interests: The Pioneer Stage Company,
88 The Overland Mail & Express Company and Wells, Fargo & Company were merged in a corporation known as "The Holladay Mail & Express Company," and the name of the concern was changed to Wells, Fargo & Company in 1866.

Question No. 5. Is respondent a Corporation, Joint Stock Association or a firm or partnership.

Answer. The Holladay Overland Mail & Express Company, organized and incorporated February 5, 1866, as shown in answer to No. 3. Wells, Fargo & Company had, however, existed as a joint stock association, organized under the laws of New York, March, 1852.

1.

History—Continued.

Question No. 6. If a re-organized Company, give name of original organization, and refer to laws under which it was organized.

Answer. The Halladay Overland *Mill* & Express Company was organized with a capital of $3,000,000, which was afterwards increased to $15,000,000, at the time of the merger referred to in answer to Question No. 4, Page 1. This capitalization was afterwards reduced to $5,000,000, which amount is reported by the Directors under oath as fully paid up. Existing records do not show whether paid up in cash, real estate, equipment or securities, and no person now living is able to give these details, 30,000 shares, at a par value of $3,000,000, were later issued at various times, as advance payments on contracts.

89 Organization.

Question No. 1. Name of Directors, Post Office Addresses, Date of Expiration of term.

Answer.—

Dudley Evans	New York, N. Y.,	August 13, 1908
F. D. Underwood	" " " "	" " "
E. H. Harriman	" " " "	" " "
H. E. Huntington	San Francisco, Cal.,	" " "
J. J. McCook	New York, N. Y.,	" " "
George E. Gray	San Francisco, Cal.,	" " "
J. Krutchnitt	Chicago, Ill,	" " "
S. R. Knott	New York, N. Y.,	" " "
W. V. S. Thorne	" " " "	" " "
W. F. Herrin	San Francisco, Cal.,	" " "
E. D. Cornish	New York, N. Y.,	" " "

Question No. 2. Date of last meeting of Stockholders for Election of Directors.

Answer. August 8, 1907.

Question No. 3. Total number of Stockholders at date of last Election.

Answer. 728.

Question No. 4. Has each share of stock one vote?

Answer. Yes.

2.

Organization—Continued.

Question No. 5. Has any issue of securities contingent voting rights?

90 Answer. No.

Question No. 6. Has any issue of securities special privileges in The Election of Directors?

Answer. No.

Question No. 7. Do any of the ten largest security holders hold any securities as Trustees?

Answer. No.

Question No. 8. Ten largest holders of voting securities.

Answer—

Name.	Address.	Number of votes.	Par value of common.	Stock held, preferred.
Southern Pacific Co.,	New York, N. Y.	15,270	1,527,000	.....
S. Haymann,	" " " "	4,186	418,600	.....
Reginald A. Saunders,	" " " "	2,000	200,000	.....
James J. Sullivan,	" " " "	2,000	200,000	.....
G. W. Bovenizer,	" " " "	1,993	199,300	.....
E. S. Steinam,	" " " "	1,862	186,200	.....
Willey G. Henser,	" " " "	1,719	171,900	.....
E. H. Harriman,	" " " "	1,524	152,400	.....
E. Lagenbache,	" " " "	1,479	147,900	.....
S. Seigman,	" " " "	1,120	112,000	.....
		31,153		

(In pencil—Reporter.) 16,194—Harriman.

91 *Officers.*

Title.	Name.	Official address.
Chairman of the Board	E. H. Harriman	New York, N. Y.
President	Dudley Evans	" " " "
Vice-President in charge of Atlantic Department	E. A. Stedman	" " " "
Vice-President in charge of Central Department	R. A. Wells	Kansas City, Missouri.
Vice-President in charge of Pacific Department	A. Christenson	San Francisco, Cal.
Secretary	A. W. Zimmermann	New York, N. Y.
Treasurer	A. W. Zimmermann	" " " "
Counsel	C. W. Stockton	" " " "
General Auditor	Richard Burr	" " " "

Officers—Continued.

Traffic Manager	J. D. Ludlow	New York, N. Y.
Assistant Traffic Manager	George S. Lee	" " " "
General Manager, Atlantic Department	E. A. Stedman	" " " "
General Manager, Central Department	R. A. Wells	Kansas City, Missouri.
General Manager, Pacific Department	A. Christenson	San Francisco, Cal.

Officer to whom correspondence concerning this report should be addressed—

Name.	Title.	Address.
Richard Burr	General Auditor	New York, N. Y.

92 *Capital Stock.*

Number of shares	Common	80,000	
" " "	Preferred	None	
Par value per share	Common	$100.00	
" " " "	Preferred	None	
Total par value outstanding	Common	$8,000,000	
" " " "	Preferred	None	
Dividends declared during the year		10%	$800,000

Income Account.

Operating Income:		
Gross Receipts from Operation	$24,490,699.06	
Express Privileges—Dr.	11,064,785.78	
		$13,425,913.28
Net operating revenue		10,310,887.62
Net operating deficit (Forward)		$3,115,025,6–

4.

Income Account—Continued.

Forward	$3,115,025.66	
Other Income:		
Dividends declared on Stock owned or controlled	$175,000.00	
Interest accrued on Funded Debt owned or controlled	88,083.33	
Interest on other Securities, Loans and Accounts	795,018.92	
Miscellaneous Income:		
Revenue, Real Estate Investments	80,789.34	
Total other income		1,138,891.59
Gross corporate income		$4,253,917.25

93 Deductions from Gross Corporate Income:

Interest	$73,301.51	
Other Deductions	.....	
Total deductions from gross corporate income		73,301.51
Net corporate income		$4,180,615.74

Disposition of Corporate Income:

Dividends—On Preferred Stock —%	$.....	
On Common Stock 10%	$800,000.00	
Additions and Betterments charged to Income	$.....	
Miscellaneous .....Dividends	.....	
		$800,000.00
Balance for year carried forward to credit of profit and loss, Surplus		$3,380,615.74

Profit and Loss Account.

Debit:		Credit:	
Balance June 30, 1907	$.....	Balance June 30, 1907	$5,531,545.28
Balance for year brought forward from Income Account	$.....	Balance for year brought forward from Income Account	3,380,615.74
Deductions for year:		Additions for year:	
To Reserve	$5,210,314.16		
Balance account of sundry debits and credits to profit and Loss during Year ending June 30, 1908	19,180.54		
To Reserve	372,330.00		
94			
Balance Credit, June 30, 1908, carried to Balance Sheet	$3,310,336.32	Balance Debit, June 30, 1908, carried to Balance Sheet	.....
	$8,912,161.02		$8,912,161.02

Operating Revenues.

Revenue from Transportation	$24,162,236.84
Revenue from operations other than Transportation	328,462.22
Gross receipts from operations	$24,490,699.06

Operating Expenses.

Express Privileges	$11,064,785.78
General Salaries	1,782,715.00
General Expenses	274,510.01
Local Office Salaries	3,742,211.40
Local Office Expenses	453,901.15
Rents	431,453.45
Stable Expenses	1,023,125.06
Loss and Damage	328,230.33
Personal Property Charges to Expenses	371,743.26
Stationery and Printing	232,657.52
Insurance	86,893.64
Pensions	20,061.93
Other Expenses	1,428,114.03
Taxes	135,270.84
Total operating expenses and taxes	$21,375,673.40

95

General Balance Sheet.

June 30, 1908.

Assets:		Liabilities:	
Expenditures for Real Property.....	$3,419,497.71	Capital Stock	$8,000,000.00
Expenditures for Equipment.....	1,180,716.62	Funded Debt	.....
Stocks Owned:			
Funded Debt Owned (Surplus).....	9,131,820.54	Current Liabilities	3,663,158.90
Loans (Surplus)	13,602,004.42	Reserve (Surplus)	16,454,307.30
Cash & Current Assests (Surplus)....	4,139,432.41	Real Estate Reserve (Surplus).....	224,789.47
Materials and Supplies.....	62,400.84	Wells Fargo & Company's Bank, Salt Lake City (Surplus).....	39,883.12
Treasurer, State of Oregon, Cash Deposit (Surplus)	50,000.00	Wells Fargo & Company's Bank, San Francisco	17,844.99
Accrued Interest (Surplus).....	88,083.33	Profit and Loss.....	3,310,336.32
Suspense	36,364.23		
Grand total	$31,710,320.10	Grand total	$31,710,320.10

(The word "surplus" in parenthesis is written in pencil wherever it occurs above—Reporter.)

7.

List of Railroad-, Stages, etc., Operated in Nevada.

Name of Railroad or Stage Line:	Total Mileage.	Mileage in Nevada.
Atchison, Topeka & Santa Fe Railway	9,843.80	11.70
Bullfrog-Goldfield Railroad	81.00	81.00
Eureka & Palisade Railway	84.00	84.00
Las Vegas & Tonopah Railroad	197.00	197.00
Nevada Central Railroad	93.00	93.00
Nevada & California Railway	330.70	222.70
96 Nevada-California-Oregon Railway	164.67	28.00
Nevada Northern Railway	143.40	143.40
San Pedro, Los Angeles & Salt Lake Railroad	925.00	211.40
Silver Peak Railroad	17.50	17.50
Southern Pacific Company	8,335.46	451.90
Tonopah & Goldfield Railroad	88.00	88.00
Virginia & Truckee Railroad	67.77	67.77
Tonopah & Tidewater Railroad	166.66	28.00
Elko & Tuscarora, Nevada (Stage)	50.00	50.00
Hawthorne to California-Nevada State Line "	37.00	34.00
Thorne to Hawthorne "	6.00	6.00
Minden to Gardnerville "	1.25	1.25
Wabuska to Yerington "	15.00	15.00
Tonopah to Manhattan "	52.00	52.00
Schurze to Rawhide "	29.50	29.50
Lake Tahoe Railway & Transportation Company	69.87	20.25
(In Pencil:)	1,725.37.	

Total Mileage Operated—Entire System.

Steam Railroads	48,576.04	Miles
Electric Railroads	1,180.11	"
Stages	932.12	"
Steamboat Lines	336.65	"
Ocean Steamers	14,449.00	"
Total	65,473.92	Miles

8.

97 *Gross Express Charges and Office Expenses.*

State of Nevada.

Name of office.	Gross express charges.		Office expenses.
	Intrastate.	Received.	Interstate.
	.....	Interstate.	Forwarded.

This information already furnished.
(Signed) RICHARD BURR,
General Auditor.

Personally appeared before me on May 13th, '09, Richard Burr, General Auditor of Wells, Fargo & Co. Express, to me known, and known to me to be the person who executed the above, and who, being sworn, declared the above statements to be true and correct to the best of his knowledge and belief.
(Signed) W. F. COLLINS,
Notary Public.

(Notarial Seal Affixed.)

Gross Express Charges.

Name of office.	Intrastate.	Interstate received.	Interstate forwarded.	Office expenses.
Acoma	28.98	284.12	37.57	40.88
Amargosa	353.85	716.18	258.07	140.62
Arden	324.00	286.15	45.60	56.62
Austin	1,490.77	14,527.21	728.21	3,395.61
Battle Mountain	1,314.09	8,226.15	677.83	1,382.71
Beatty	416.26	2,144.39	267.91	459.73
Bewawa	440.35	2,435.52	358.42	383.02
Blair	4,693.46	10,268.89	3,820.38	1,872.15
Bonnie Clare	348.41	311.73	45.00	98.49
Caliente	546.87	8,242.16	3,786.56	1,204.53
Carlin	660.06	5,267.65	374.33	804.41
Carson	5,927.05	14,009.81	6,169.14	3,334.10
Cherry Creek	158.05	2,967.80	145.39	339.48
Coaldale	79.35	220.06	31.60	44.77
Cobre	150.35	1,882.55	205.58	1,102.33
Cuprite	175.14	109.36	30.70	35.95
Curries	121.23	382.92	113.92	67.28
Dayton	731.51	1,534.99	428.34	413.75
Deeth	275.40	1,838.25	201.97	335.79
Elko	1,963.26	21,088.30	2,314.19	2,553.23
Fly	1,229.39	30,640.38	2,154.16	4,742.01
Ely City	453.33	4,117.00	339.66	639.38
Eureka	807.89	8,611.23	367.84	1,822.88
F[illegible]	5,015.63	16,526.34	1,593.60	2,571.04

Statement of Business of Wells, Fargo & Company Express in the State of Nevada, Year 1908.—Continued.

Name of office.	Intrastate.	Interstate received.	Interstate forwarded.	Office expenses.
Fort Churchill	115.29	114.68	65.20	98.01
Franktown	170.68	216.58	47.75	189.90
Gardnerville	520.34	2,421.32	245.14	502.63
Glenbrook	58.45	1,704.63	.....	50.48
Golconda	1,838.14	7,843.12	832.76	1,409.44
Goldfield	14,252.27	96,115.78	13,888.82	21,500.99
Gold Hill	165.52	1,253.77	292.43	238.70
Halleck	278.51	1,518.53	134.22	308.23
Hawthorne	1,363.69	2,238.05	434.69	649.74
Hazen	1,840.32	1,266.96	364.75	2,042.71
Humboldt	526.36	729.06	264.39	205.97
Jean	79.59	820.92	177.95	111.99
Las Vegas	989.57	6,473.20	1,035.30	3,204.73
Leeland	50.09	216.15	102.31	57.96
Lovelock	4,908.89	16,152.11	1,383.96	3,035.76
Luning	834.89	885.23	78.39	195.97
McGill	1,175.38	10,452.29	566.26	778.27
Manhattan	636.87	10,814.68	905.83	1,402.52
Mill City	1,847.45	2,610.89	233.62	638.23
Millers	2,280.81	5,710.57	24,352.15	2,020.07
Mina	3,919.47	5,664.09	1,007.94	2,765.86
Minden	393.83	2,440.40	1,243.19	420.00
Moapa	335.83	1,481.88	4,954.18	914.51
Montella	130.86	2,016.26	147.56	292.07
Moundhouse	41.81	133.87	34.97	172.53

Palisade	1,064.32	4,819.23	320.58	1,097.51
Panaca	143.98	446.61	12.65	77.34
Parran	46.35	187.72	15.80	35.58
Pioche	575.22	7,167.04	494.64	838.10
Rawhide	3,777.20	13,043.20	2,306.35	4,598.10
Reno	8,945.67	81,974.02	23,658.39	23,752.72
Rhyolite	903.81	9,110.91	3,927.15	2,913.09
Rye Patch	111.65	225.19	15.75	43.06
Schurz	8,654.92	12,742.19	1,367.55	2,923.95
Searchlight	35.85	10,259.87	2,109.95	1,698.02
Sodaville	227.44	325.22	50.20	60.36
Sparks	190.86	4,257.58	850.05	1,345.96
Stonewall	1.50	3.50	.....	.43
Tecoma	87.75	1,078.39	183.91	178.88
Thorne	620.32	434.88	71.07	243.44
Tonopah	9,420.95	54,570.41	11,841.01	11,903.10
Tuscarora	293.10	3,065.48	920.17	441.80
Verdi	220.66	983.33	367.87	210.79
Virginia	1,407.58	9,136.29	3,073.71	2,287.87
Wabuska	1,340.44	2,338.00	525.70	1,026.82
Wadsworth	784.11	1,758.25	336.93	507.04
Wells	405.87	4,187.40	344.92	658.34
Winnemucca	2,399.74	17,543.48	2,282.19	3,445.15
Yerington	1,039.66	5,427.73	699.59	754.43
C. O. D.'s	1,483.42	456.53	8,640.46	.....
Total Money Order Charges	14,151.74	.....	.....	1,905.20
	$124,794.12	$583,485.97	$141,905.59	$134,007.99

Statement of Business of Wells, Fargo & Company Express in the State of Nevada, Year 1908.—Continued.

In pencil—
583,485.97
124,794.12

$850,185.68
425,092.84 Express privileges.

425,092.84
134,007.99 Opr. Expenses.

291,084.85 Net.

7% on $4,000,000 Value of W. F. & Co. property—franchises, etc., in Nevada.
State of Nevada vs. Wells, Fargo & Co. No. 1815.

Defendant's Exhibit 2 in evidence. Filed Oct. 17, A. D. 1912. J. W. Davey, Clerk, by —— ——, Deputy.

100 The Court: We will take a recess at this time unless you desire to proce-d?

Mr. Gibbons: That suits me.

Mr. Callahan: That is satisfactory to us.

The Court: This case will be continued until/ tomorrow morning at ten o'clock. Court will be in recess until that time.

Morning Session.

Friday, October 18th, A. D. 1912—10 a. m. o'clock.

The Court: You may proceed. Mr. Shaughnessy you may take the stand again.

Testimony of J. F. SHAUGHNESSY, who having been heretofore called, and duly sworn, upon resuming the stand, testifies as follows, to wit:

Direct examination (continued):

Mr. Gibbons: I desire to ask you one other question. In making your report Mr. Shaughnessy to the State Board of Assessor-
101 which you mentioned yesterday, and which is set forth on Page 117 of Defendant's Exhibit No. 1, in estimating the net profits of the Wells Fargo Company did you deduct the expense of oper*ta*ing and maintain-g the foreign offices in arriving at the net income?

A. Only such expenses as are reported to us in the State—that is if you mean the offices from outside of Nevada?

Q. Yes. Of course you knew as a matter of fact that they were maintained, and that it was necessary to maintain offices outside of the State at an expense in order to forward express matter?

A. Yes, sir, that is true.

Q. Do you know anything of the amount of money that Wells Fargo & Company have invested in property outside of the State of Nevada, which is used in its express business?

A. No, I do not know how much money they have invested outside of the State.

Mr. Gibbons: That is all.

Cross-examination.

Mr. Baker:

(Q.) Mr. Shaughnessey, you have no official connection in any way with the State Board of Assessors have you?

A. No, sir.

Q. What is your duty as Railroad Commissioner—what is it comprised of in a general way?

102 A. Well, it comprises the matter of the regulation of rates, and various services of the railroads. That is as to rates, and the same way with the public utilities and public service commission.

Q. That is true also in regard to the public service corporations, operating in this State?

A. Yes, sir.

Q. And the law provides you with the means and privileges of receiving statements from all of the public utilities companies?

A. Yes, sir.

Q. And upon the request of the Railroad Commission they are to be forwarded you these statements?

A. Yes, sir that is true.

Q. How did you happen to get this statement which has been introduced here as Defendant's Exhibits No. 2?

A. That was placed before the Board of Assessors.

Q. No, the statement which the Wells Fargo Company gave you in the year 1910?

A. The statement of the operations, earnings and expenses by stations, and the report by stations within the State of Nevada was made up for the Commission upon their request, and for the purpose of enabling the Commission to judge as to the reasonableness of the Wells, Fargo & Company's charges within the State of Nevada.

Q. Was it made up with any idea of ascertaining what would be a proper tax?

A. No, sir, it was not.

103 Q. And in requesting that statement did you furnish them with a formula as to what information you desired, or was it a request for all the information relative to their business in this State?

A. As I recall it, it was with reference to all of the business within the State, and it contemplated that all of the Nevada Stations should be reported with their proportion of all earnings, and for the intrastate business, and for their proportion of the amount of the through business, and likewise with reference to the expense, and contemplated that all expenses would be included in, and put in, in the making up of that statement. There was some correspondence between the Commission and Mr. Burr, the General Manager of Wells Fargo & Company, and when the report was rendered it did not include the segregation of the earnings on that business going through the State, and it did not include all of the expenses as I learned later, but only included——

Q. Did you expect that it would?

A. We expected that it would, but I have found out since that it only included those expenses which were directly chargeable to the stations within the State.

Q. How was it that you appeared before the Board of Assessors of this State, and at whose request, in 1910?

A. It was upon the request of the Chairman of the State Board of Assessors.

Q. Who was that?

A. Governor Dickerson.

104 Q. In what capacity did you appear?

A. Why I appeared as a member of the Railroad Commission.

Q. For what purpose?

A. For the purpose of furnishing data as to the earnings and ex-

penses of various public service corporations operating within the State of Nevada.

Q. And upon what information you had, or had at hand, as well as your general knowledge of conditions, you gave that information to the Board upon their request, did you?

A. I did—yes, sir.

Q. Do you know the method by which the State Board of Assessors arrived at the three hundred dollars per mile valuation?

A. No, I do not know the exact method.

Q. Was that arrived at in your presence, or were you present at the deliberations of the Board in arriving at it?

A. I was present there and explained the statement in a general way first.

Q. That is the statement which appears in the record?

A. In the record. I explained that statement, which recommended a valuation—or rather two valuations, one of $857.00 and another of $500.00 per mile to the Chairman of the Board, and to the Attorney General, and the Controller, that is the Board of Revenue, that is I explained it to them, and they in turn or through the Chairman explained it to the Board of Assessors. I was present during that time, and after it had been explained by the
105 Chairman, and copies had been handed to each assessor or member of the Board, a member of the Board moved a recess of fifteen minutes be taken, which was taken for deliberation and consideration of the matter of the Wells Fargo & Company valuation. After reconvening the Chairman of The Board suggested that instead of five hundred dollars a mile being taken as recommended in that statement by the Commission, that they go even lower and place the valuation at three hundred dollars per mile, and that valuation of three hundred dollars a mile was then adopted by the board of Assessors after they reconvened, after that conference. What deliberations they had after that conference I have no knowledge, and I do not know what considerations were taken.

Q. Do you know what method of calculation, or what elements entered into the consideration in arriving at the figures of three hundred dollars per mile?

A. No, I do not.

Q. What recommendation did you make as to the rate per mile?

A. In the statement?

Q. Yes.

A. Well, it shows for itself there. There were two recommendations made, one for $847.00 per mile, which was upon the basis of that $291,084.85 the capitalization, at seven per cent, and following that in the same statement I suggested that if they found it expedient to take any lesser valuation than that, that five
106 hundred dollars per mile would bring a certain amount of revenue.

Q. And did they place the valuation at five hundred dollars per mile?

A. They went even lower than that; they placed it at three hundred dollars per mile.

Q. You arrived at the figures of $291,084.85 as the net earning revenue, as Mr. Gibbons has brought out this morning you did not charge with that the cost of the foreign offices throughout the State?

A. No, I did not. And there is also general expenses, and taxes, which should properly be included therein.

Q. You simply took the statement you had and figured the average, and arrived at what you considered a fair valuation for it?

A. I did as I explained yesterday. While I realized that those figures were not in and of themselves accurate, I figured by reason of the fact that the larger share of earnings on the mile pro-rate, which was passing over Nevada, not being included, that the figures there *were* used were fair in proportion. In other words I assumed that if the over-head earnings were taken, and as against that——

Mr. Gibbons:

(Q.) By over-head earnings what do you mean?

A. The earnings of the traffic passing through the State of Nevada, not included in this report rendered to us by Wells Fargo & Company.

Mr. Baker:

(Q.) These earnings outside of the State of Nevada, and passing through the State, and into other states?

A. Yes.

107 Q. In other words the inter-state business?

A. Yes, sir.

Mr. Gibbons:

(Q.) The question of the inter-state business?

Mr. Baker: The question of the inter-state business?

A. The through business.

Q. The through business?

A. Of course the in and out, and say also the inter-state business.

Q. You had included in your estimate some of the inter-state business?

A. Yes, sir.

Q. Business originating in the State of Nevada, and passing to a point outside of the State, and business originating at a point outside of the State and passing to a point within the State?

A. Yes, sir.

Q. You have included that in your estimate have you?

A. Yes, sir.

Q. You did not do that upon a per mileage basis?

A. ——.

Q. You did not do that upon a per mileage basis did you?

A. We did not take the mileage pro rata of those shipments for the reason that it was not reported to us in those datas we had received.

Q. And did you have any means of finding it out at that time?

108 A. No, not at that time, nor since, have we required a report of that kind.

Q. Then you have included in that sum, some of the inter-state business which ordinarily would not properly belong in the estimate, is that correct?

A. That is true.

Q. And you think that is off-set by the fact that you did not include the part of the inter-state business which we are entitled to on the through business?

A. Yes, sir, I think it is much more than off-set.

Q. Upon what do you base that?

A. In the absence of any direct data from the Express Company I estimated that from my general knowledge of the freight situation. That in taking the freight handled by the Southern Pacific, the Western Pacific, and the San Pedro, and other lines of that character, and assuming that the express matter, which is in the nature of a higher class freight, that is that it is passenger freight instead of ordinary freight, and assuming that the passenger business moving across this State and into this State, is in practically the same ratio, which I am quite sure it is, the ratio amounts to just this in freight which we have checked many times. The freight touching Nevada say on the Southern Pacific, we will take that as an example, the freight touching Nevada, which is local freight between points in Nevada, and those in and out amounts to thirty per cent of the total, and the t-rough business amounts to seventy per cent of the total business. Now I estimate that the ex-

109 press business will run in the same ratio. That is in other words while the locals in and out would amount to eight hundred and fifty thousand dollars fo*r* that year in gross revenue, that the in and out that that would constitute thirty per cent of the total business, and the through business would be seventy per cen*t* or two thirds greater than that amount. That is the basis.

Mr. Gibbons: That is an estimate based upon your figures?

A. That is an estimate based from freight rates.

Q. But that is an estimate based upon no actual fig*h*ures as to the through business?

A. Not of the Wells Fargo Company, but *it* just a simple estimate.

Mr. Baker:

(Q.) Would you say Mr. Shaughnessy from your own knowledge of the freight conditions, and the Wells Fargo & Company conditions in this State, that the tax of three hundred dollars per mile is a fair tax?

Mr. Gibbons: I submit, if your Honor please, that the question is incompetent, immaterial and irrelevant. The question is not whether it is a fair tax or not, but the question is whether it is a legal tax.

Mr. Baker: I am asking him whether or not the tax is a fair tax

in his opinion, as it is simply a matter of judgment on the part of a human being, or an assessor, is simply a matter of judgment, your Honor. Your Honor might put one valuation upon it, and someone who went to assess it might put another on it.

110 (Further discussion.)

Mr. Baker: He is willing to admit this is a fair valuation?

Mr. Gibbons: No, I am not willing to admit anything. I am simply objecting to incompetent testimony.

The Court: I think I will admit the question of his opinion as to it being a fair tax subject to the objection. You may answer the question.

Mr. Gibbons: Note our objection, e-ception upon the grounds stated in the objection.

The Court: I am not going to pass upon it at this time.

Mr. Gibbons: I understand.

The Court: The question in my mind is whether it is proper cross examination.

Mr. Gibbons: What is that?

The Court: I say the question in my mind is whether it is proper cross examination.

Mr. Gibbons: It is absolutely incompetent whether it is fair or not, and that is not a question for the Court to determine. The question for the Court to determine is, and the Court has only got to determine, whether the State has the right to tax this property, and the Court cannot set it aside because the Court thinks it is too much or too little.

Mr. Baker: On the question of not being proper cross examination, Mr. Gibbons?

Mr. Gibson: I do not raise that.

111 Mr. Baker: If they raise that we can put Mr. Shaughnessey on as our witness, but we just thought we would ask him the question while he was on the stand.

Mr. Gibbons: I do not raise the question of not proper cross examination.

The Court: Let the record show that the question is admitted subject to the objection. Read the question.

(Reporter reads the question.)

Q. Would you say, Mr. Shaughnessey from your own knowledge of the freight conditions, and the Wells Fargo & Company conditions in this State, that the tax of three hundred dollars per mile is a fair tax?

A. I would say that it is a very reasonable tax in my judgment.

Mr. Callahan:

(Q.) You refer to the valuation?

A. Yes, sir.

Q. The valuation of three hundred dollars per mile?

A. The valuation of three hundred dollars per mile.

Mr. Baker:

(Q.) Have you prepared any data or figures in that connection?

A. In reference to what?

Q. The expense, the general or entire expense of Wells Fargo & Company, and the total earnings of the Wells Fargo Company for the year 1910?

A. Yes, I made a revision of a statement, which I submitted to the Board of Assessors, and in the proposition I included as nearly as possible those outside expenses which Mr. Gibbons has
112 been referring to. The outside station expenses, the general expenses, and the messenger expenses and the taxes and insurance, and have attempted to enumerate those that would naturally come in in the transaction of the Wells Fargo & Company business as a whole outside of the State as well as within the State.

Q. In other words you have prepared from data which you had to consider, all of those things which would have and should have been included in the first instance since, is that correct?

A. I have, I have, sir.

Q. Will you state to the Court the result of that?

Mr. Gibbons: When did you make that compilation?

A. I just made it within the last few days.

Q. You did not make it, and present it before the Board of Assessors in 1910?

A. No, sir, I did not do so.

Q. And it was not submitted to the Board of Assessors in 1910?

A. No, sir, it was not.

Q. And the Board of Assessors did not act upon any data you are now about to give the Court?

A. No, sir, they did not Mr. Gibbons.

Mr. Callahan: Do you object to it as calling for a conclusion?

Mr. Gibbons: The Board of Assessors in 1910 did not act upon any data prepared by Mr. Shaughnessey, in October, 1912. Probably my questions were unnecessary. I did not ask him whether they acted upon the data contained therein, but I asked him
113 if they acted upon the data prepared by him (Mr. Shaughnessey) in October 1912.

I object to any data or testimony of that kind upon the grounds that it is incompetent, irrelevant, and immaterial, and can in no way affect this case. It can not be contended that a valid tax, or get at the method by determining by the data prepared by Mr. Shaughnessey or any one else in the year 1912.

(Further discussion.)

The Court: I will overrule the objection and admit it subject to the objection.

Mr. Gibbons: Note an exception upon the grounds stated in the objection, that the evidence is incompetent, irrelevant and immaterial, and can throw no light whatsoever upon the action of the Board of Assessors in the year 1910 in making the assessment, or levying the tax herein sued for.

The Court: It is all purely speculative as to whether the Board acted upon the information furnished in 1910.

Mr. Gibbons: The minutes show that they acted upon it—*taht* is my opinion.

The Court: Do you remember the question Mr. Shaughnessey?

A. Yes, I believe I do.

The Court: Read the question.

(Reporter reads the question.)

114 Q. Will you state to the Court the result of that?

Mr. Gibbons: I also wish to interpose the additional objection that this compilation, a part of it purports to be a statement of the earnings of Wells Fargo & Company for the year of 1908 and can have no bearing upon this case at issue before the Court.

The Court: Overrule the objection subject to the objection.

Mr. Baker: That was the basis *from* which you used in levying and figuring the tax?

Mr. Callahan: That is cross examination on that.

Mr. Gibbons: That is a matter to be argued upon the final argument the earnings of 1908 as the basis for the taxation in 1910.

The Court: The objection will be overruled subject to the objection.

Mr. Gibbons: The exception is also noted upon the last ground stated.

(Reporter reads the question.)

Q. Will you state to the Court the result of that?

A. I explained yesterday that the figures that were used in making up that compilation embraced the last actual report that was before the Commission, that is the figures for the year 1908, instead of for the year of 1907, and I assumed that the figures of 1908 would be substantially as they were in 1909. There was very little change in the earnings. In order to get at a fair estimate of the expenses outside of the State from all sourses as I explained
115 before General expenses, taxes, insurance, and messenger service, and everything of that nature that should be included as bearing upon the operation within the State of Nevada, not directly to the State of Nevada, but indirectly, because, there are many things outside of the State of Nevada, which are included in the general expense for the system as a whole which are very wide indeed, in the application to Nevada. In fact they would have little or no bearing. The supervision is less, and the messenger service is very much less, and the taxes are very much less than what would probably be a pro-rata for the system as a whole outside of the State of Nevada. The insurance is very much less, and everything we have included would be very much less in this State than outside of this State, by reason of the fact that Wells Fargo & Company have very little, if any real property—tangible property within the State of Nevada. But in order to get at the expenses and make the estimate as fair as possible on this basis, and without the inclusion of the earnings on traffic passing over the State, but just take the

eight hundred and fifty thousand dollars which was earned on business between points in Nevada, and from within and without, and without to within, and assuming that that would be fairly *represented* of the earnings upon the Nevada mileage, I have made up a statement here in order to show as nearly as possible the true amount of expense which should be included—the actual net which would be creditable to the Nevada mileage, and in making
116 up that I have set up a statement there at the top of the page, if you will just follow me on through it. I have set up the gross receipts from the operation within Nevada for the year of 1908, which were eight hundred and fifty thousand odd dollars—I just use the even numbers in calling it off. I have taken out then the receipts set aside for the express privileges on the railroads on the basis of fifty per cent as I explained yesterday. I have set those aside. Then I take as operating revenue a like amount of $450,000.00 which are the express revenues within the State of Nevada after having paid the railroad for the transportation. Then I have contrasted against that the operating expenses which are stations—those are the expenses which I used before the Board of Assessors, and it did not include the expenses outside of the State. The amount of $134,000.00 and that leaves a net revenue—the net operating revenue of $291,000.00 odd dollars which I formerly used in the statement before the Board of Assessors.

Mr. Baker:

(Q.) In other words that $134,007.99 does not include the cost of the stations outside of the State which are used in sending stuff into the State of Nevada?

A. That is true. Neither does it include the taxes or the general expenses which should be included. And that $291,084.85 is seven per cent on four million dollars which I used in my statement before the Board of Assessors. Now in order to get at the true net and
117 the proper operating expenses just drop down to the next statement of revenues I have taken. The operating expenses and taxes for the entire system, and the operating revenues I have taken from the entire system. And I have found that the ratio of the operating expenses and taxes added together, and the operating revenues for the entire system that the ratio is as you will note 77.85 per cent. That is the ratio of the operating expenses and the taxes to the earnings.

Q. That is the $10,310,887.62 and the $135,270.84 added together?

A. Yes, sir.

Q. And divided?

A. Yes, sir.

Q. And that gives you 77.85 per cent?

A. Well, that is divided into the earnings which are $13,425,913.28.

The Court: Go over that again Mr. Shaughnessey—*I* do not think I quite understand it?

A. Yes, your Honor. In order to find the ratio of the operating

expenses and taxes, I have set up on the line there—on the first line you will observe (indicating) the operating revenues of the entire system which are $13,425,913.28.

Mr. Baker: That is for the operating revenues or earnings?

A. The earnings for the system as a whole.

The Court: The gross earnings?

A. No, sir, not gross earnings. That is the earnings to the Express Company for having—for the transportation that is
118 set aside, that part of it.

Mr. Baker: The gross earni-gs?

A. No, no.

Q. The gross earnings are twenty-six mill'on dollars?

A. Something around that.

Q. In that neighborhood?

A. Something in that neighborhood—yes. In these are the express earnings, the expenses and taxes after having paid to the railroad for the privileges. I have added the operating expenses that $10,310,887.62 to the taxes of $135,270.84, added them together, I have added those two amounts together, and then divided that result by the earnings which are $13,425,913.28 and that will give you the ratio of the expenses and taxes to the earnings which is the amount stated there below of 77.85 per cent. Is that clear now, Judge?

The Court: I understand.

A. Then I have again set up and taken the revenuse within Nevada of $425,092.84, and in order to find the operating expenses then within Nevada, I have taken that ratio of 77.85 per cent for the system as a whole, and applied that to the $425,092.84 and that gives you the average operating expenses based upon the system as a whole. In other words that is making the Nevada business bear the same proportion of expense to the entire business for the system as a whole, would carry. You understand that Judge?

The Court: I understand.

A. And taking that that brings the amount of expense to
119 $330,934.77 and subtracting that from the earnings and that leaves a net operating revenue of $94,158.07. Then if that amount is capitalized then on the basis of seven per cent it will bring the value of the property of the Wells Fargo & Company in Nevada to $1,351,153.00, and if that amount is divided, and considered as the full value of the property within the State of Nevada it will bring the per mile valuation of $850.00. If on the other hand it is assumed that sixty per cent ad valorum valuation would be used the per mile valuation will be $480.00. That is on the last page. And if it is brought down to forty per cent it will leave a per mile valuation of $306.00. Now as before contended this, or these compilations do not include the revenues of the expressage covering and the movement of traffic across Nevada. Take for example between New York and San Francisco which is very heavy, and to which if we have the report of those earnings upon that particular shipment we might take the mileage pro-rata—take the Nevada mileage prorate, take that proportion that that mileage bears to the total mileage

as the Nevada proportion of the earnings. If they were included it would bring the amount up to several times what we have used here. The idea in making up this statement along this line was that we were not—while we included the earnings from inter-state traffic as it were, we did not figure that we were directly taxing the inter-state commerce, for the reason, as explained before, that *is* measuring the value of the property within the State we must properly use the mileage pro-rate of the railroad, the local, the in and out and the through, and use that as a measure for finding the fair valuation of the property within the State. And being unable to obtain and apply the earnings on that through business we felt that we were not improperly including the earnings on the inter-state commerce by using that proportion of the eight hundred and fifty thousand odd dollars, which was made up of in and out business for inter-state commerce which we took as a whole instead of the mileage pro rate.

120

Mr. Baker:

(Q.) In other words you took the eight hundred and fifty thousand dollars as a lump sum irrespective of whether it was inter-state commerce or state;

A. Yes, sir.

Q. And what would be ordinarily fair to take, considering we are and being entitled to the *through* business? is that the idea?

A. Yes, sir, in consideration of our being entitled to our mileage pro-rate of all traffic.

Q. In consideration of our being entitled to our mileage pro-rate of all traffic?

A. In and out of the State.

Q. In and out of the State and through the State?

A. Yes, sir.

Q. It was simply an estimate on your part?

A. Simply an estimate, yes, sir.

Q. As some means of arriving at what you considered to be a fair valuation?

121

A. Yes, sir, we considered that it was a fair measure to apply under the circumstances.

Q. Did you have any other data or information at hand that you could have used?

A. No, that was all we had. That was all that we had to find the fair valuation of the property—the tangible and intangible property.

Mr. Baker: We would like to offer this in evidence if the Court please.

Mr. Gibbons: I object to it upon the grounds heretofore stated as in my objection to Mr. Shaughnessey's testimony along that line. It is simply a memoranda, and it is incompetent, irrelevant and immaterial, and can in no way affect the disposition of this case, or show the basis for the actual assessment of the State Board of Assessors in the y-ar 1910.

The Court: The objection may be overruled.

Mr. Gibbons: The exception may be noted upon the grounds stated.

The Court: It may be admitted in evidence and marked Plaintiff's Exhibit "B" in evidence.

Mr. Baker: That is all Mr. Shaughnessey.

Exhibit "B" for Plaintiff's evidence reads as follows:

122 Wells Fargo and Company within Nevada.

For the Year Ending June 30th, 1908.

Gross Receipts for operation	$850,185.68
Express privileges paid to Railroads (estimated)	425,092.84
Operating revenues (in pencil "to express Co.")	425,092.84
Operating Expenses (station) (in pencil "only")	134,007.90
Net operating revenue	$291,084.85

(Nevada Mileage 50% to P. Ry.)

The above net revenue ($291,084.85) is 7% on $4,000,000.00.

The above expenses as reported to the Railroad Commission for the year 1908, cover only station expenses and do not include rents, Messenger Service, Loss and Damage, Stable Expenses, Stationery and Printing, Insurance, General Expenses and Taxes, If these are to be included, (and in order to be ac-urate, they should be) the ratio of operating expenses and taxes to earnings, for the system as a whole, should be applied to the Nevada operating revenues (425,092.84) and the sum accruing therefrom will represent by a close approximation, the net earnings which may be capitalized in finding the valuation of the property within Nevada.

Proceeding as above outlined, the results are as follows:

Operating Revenues (Entire System)	$13,425,913.28
Operating Expenses (Entire System)	10,310,887.62
Taxes (Entire System)	135,270.84

Ratio*n* of Operating Expenses and Taxes to Earnings 77.85%.

Operating Revenues (Nevada)	$425,092.84
Operating Expenses (Determined by applying above ratio 77.85%)	330,934.77
Net Operating Revenue	$94,158.07

123 The above Net Operating Revenue ($94,158.07) is 7% on $1,351,153.00.

If 40% is applied to this in line with the contentions made before the Board of Assessors' Meeting, that the average assessed valuation of other property did not exceed that amount, we have a valuation of

$52,000 for the property of Wells Fargo and Company within Nevada, or on the basis of 1700 miles of railroad mileage over which operation- were conducted, an average per mile valuation of $306.00.

The foregoing computations are not, or may not be fair to Nevada for the reason that the Nevada earnings shown compr-se only the revenue covering the movement of traffic known as intra-state and that moving from within to without and from without the State to within the State.

In these calculations, no account has been taken of the heavy earnings to the Nevada mileage on traffic passing through the State—the Nevada mileage pro rata of which, the State may justly and legally use in measuring the value of the property for the purpose of assessment.

If the foregoing full value of the property ($1,351,153) is applied the assessed value per mile would be $850.00. If on the other hand 60% of the property value is applied the assessed value per mile would be $480.00.

Marked: State of Nevada vs. Wells Fargo & Co. No. 1815. Plaintiff's Exhibit B in evidence. Filed October 18, A. D. 1912. J. W. Davey, Clerk, by —— ——, Deputy.

124 Redirect examination.

Mr. Gibbons:

(Q.) Mr. Shaughnessey you stated to Mr. Baker that this sum of eight hundred and fifty thousand dollars that has been frequently mentioned here is simply a lump sum or estimate; and you stated to me yesterday several times that the sum was arrived at by taking the sum total of intra-state business and the in and out business; Now which was true?

A. That was true.

Q. Then it was not simply an estimate or lump sum, it was a sum arrived at by certain figures, is it not?

A. You did not understand me yesterday. I estimated—I would like to make that clear to you?

Q. That is all right Mr. Shaughnessey. I want to get the idea as to the eight hundred and fifty thousand dollars, and then you can make any explanation whatsoever you desire. I think the way the record stands now you were put in the wrong as to what you really mean. Now this sum of eight hundred and fifty thousand dollars—that sum itself was arrived at by taking the sum total of the intra-state business, and the in and out business—that is the business originating in Nevada and going to other States, and business originating in ot*y*er states, with its final destination being the State of Nevada?

A. That is true.

Q. Now that was the way you got that sum?

125 A. Yes, sir.

Q. And when you stated that that was taken as a lump

sum or as an estimate or something of that kind, you had already arrived at that figure, or took that estimate from figures and considered that that would be made on a fair basis?

A. Yes, sir.

Q. And the basis upon which to make it?

A. By reason of the fact that the over-head or through business was eliminated.

Q. After deducting the entire operating expenses of the system as a whole, from its entire operating revenues, and also deducting the taxes, you arrives at a certain ratio of the expenses and taxes toward the net earnings?

A. Towards the gross earning Mr. Gibbons.

Q. Yes, the gross earnings I mean. Then you first deducted from the sum of eight hundred and fifty thousand dollars fifty per cent, being an estimate or approximate cost of the railroad privileges or tax?

A. Yes, sir.

Q. Which gave you the sum of some four hundred and twenty five thousand dollars?

A. Yes, sir.

Q. And that sum of four hundred and twenty five thousand dollars, applying the same ratio of expenses throughout the system to the State of Nevada, you took from the $425,000.00 odd thousand dollars 77.85% thereof?

A. Yes, sir.

126 Q. And that gave you a net operating revenue of $94,-158.07?

A. That is true.

Q. Now the net operating revenue is comprised of revenue derived from intra-state business, and in and out business?

A. Yes, sir, that is true.

Q. And the greater portion of, or proportion of that revenue is derived from in and out business is it not?

A. Yes, that is true.

Q. And so even in the estimate in arriving at the net profits, you have considered express business which is properly and in reality inter-state business?

A. Yes, sir.

Q. That is true?

A. Yes.

Q. Now if it be a fact—this is a supposition, because I understood you to state you had no data from which you could ascertain the fact—if it be a fact that in the year of 1910 the net intra-state profits were $6,225.00 and some odd cents, if that be a fact, then of this net operating revenue of profits of $94,158.07 all but the $6,225.00 and odd cents would be a profit derived from inter-state business?

A. Yes, be that on inter-state business.

Q. That is business—I don't want to misrepresent you—that is business originating in the State of Nevada and *and* having its final destination within the State of Nevada to some other state of

127 this Union, or to some foreign countries, and business originating outside of the State of Nevada, either in some state of this Union or in foreign countries, and having its final destination within the State of Nevada?

A. Yes, that is true.

Mr. Baker:

(Q.) That would amount to $6,225.00?

A. That is if you claim Mr. Gibbons' figures are correct. Mr. Gibbons assumes a state of facts. Mr. Gibbons assumes that the intra-state business for the year in the State of Nevada was six thousand and some odd dollars and cents, and the difference between that six thousand and some odd dollars and cents and $94,158.07 I have used would be in its nature derived from inter-state traffic. That is true. Now as an example of course this is all subject to its qualification.

Mr. Gibbons:

(Q.) Oh of course, certainly it is subject to that assumption that that was the net inter-state profit—subject to that assumption of course. In other words, in order that this may be clear, and to clear the matter up, and get it in the record clear. The net operating revenue of $94,158.07 is the net profit from intra-state business, and from in and out business?

A. Yes.

Q. For in and out business, that is business originating within the State of Nevada, and having its destination outside of the State?

A. Yes, sir.

128 Q. And business originating outside of the State of Nevada and having its final destination within the State of Nevada?

A. Yes.

Q. Now in order to arrive at the gross or net profit or revenue from the inter-state business—that is in and out business—if you knew the net revenue from purely intra-state business you would arrive at the profit on the inter-state business by deducting the intra-state profit from the total?

A. That is true.

Q. Then if we assume that the net intra-state profits were $6,225.00 in that year, and some odd cents, then the net profit on inter-state business included within the sum of $94,158.07 would be the difference between $6,225.00 and some odd cents, and the $94,158.07 would it not?

A. Correct.

Q. Which would be $87,933.07 if I have not made an error in the subtraction?

A. ——.

Q. So of that sum—upon the assumption—upon the assumption that the net profits from intra-state business are $6,225.00, and that that was included within the sum of $94,158.07, that that was included in the sum—$87,000.00 odd dollars of that sum would be

derived from inter-state business, and for inter-state commerce pure and simple?

A. Yes.

129 Q. Mr. Shaughnessey was Wells Fargo & Company represented there at the meeting of the Board of Assessors in January, 1910?

A. Not to my knowledge. I did not see anybody there.

Q. For the past two years or more—You are acquainted with the officials of Wells Fargo & Company, and their attorneys?

A. Yes, sir.

Q. And you know who they are?

A. Yes, sir, I know them.

Q. And if they had been there you would undoubtedly have known it?

A. Yes, sir, I certainly would.

Q. And they were not present?

A. They were not present.

Q. Now this question may be objected to, and it may be objectionable Mr. Shaughnessey, and you need not answer it until you have time to object, but I will put it. It is really a question of law, but I think counsel and I can agree upon it. Mr. Shaughnessey as Railroad Commissioner is it not one of your duties, and have you not made it one of your duties, to familiarize yourself as thoroughly as you can with all of the laws of the State of Nevada relating to revenues and taxation, as well as the laws of the United States, and with decisions, especially decisions of the United States Supreme Courts upon matters relating to revenues and taxation?

A. Yes, in a general way.

130 Q. And you have specialized upon that subject in so far as you have been able to?

A. In so far as I have had time.

Q. Yes. Do you know of any law of the State of Nevada which provides that notice shall be given to any corporation, express company, railroad company or other company that is about to be assessed or upon whose property a valuation is to be placed by the State Board of Assessors?

A. No, sir, I do not know of any such law.

Q. I am frank to say I do not know of any such law, and I have not been able to find any. I wanted to get a little cheap information, and as I could not find such a law I did not think there was one.

I believe I have asked you Mr. Shaughnessey as to your knowledge as to the actual tangible property of the Wells Fargo Company within the State of Nevada, and you stated that you had no information upon that subject?

A. I stated it was not segregated and shown to us, but it was reported as a whole upon the system as a whole.

Q. The Wells Fargo & Company in reporting to you, and making its report to the Railroad Commission, did it or did it not state the property that it owned, apart from the property that is used in the conducting of its business such as bonds and other things?

A. I do not understand that question Mr. Gibbons?

Q. Did the Wells Fargo & Company in making a report to you, or to the Railroad Commission, of its condition and of it-
131 property, report that it held, such as bonds and permanent investments, which were not used in the conducting of its business, as well as the property such as equipments and other property that was used in its business?

A. Yes, they reported to us all of their capitalization and stock, and they reported to us that they have no bonded indebtedness of their own.

Q. They own bonds?

A. I was coming to that. I was coming to that. They also reported to us the securities owned and controlled by them.

Q. Is it not necessary Mr. Shaughnessey for Wells Fargo & Company, or any other express Company for that matter, in conducting an express business throughout the United States to own certain property such as equipment and other things throughout the different States through which they do business?

A. Yes, that is true.

Q. And it is necessary, is it not, to use all of that property and equipment for the inter-state commerce business?

A. Yes, sir.

Q. That is to be used on the system as a whole?

A. Yes, sir.

Q. To illustrate my views. In order that Wells Fargo & Company may transport an express package from New York to Nevada, it is necessary that they own certain facilities and equipment
132 in all states through which the express matter passes?

A. That is true.

Q. And al- of that property so owned by it is used to a certain extent in the transportation of that package?

A. Yes, sir.

Q. And all of that property contributes to the earnings received from the carriage of that package?

A. Yes, sir.

Q. So that their investments necessary to bring a package say from New York to Nevada, is an investment as it were on the system as a whole, that is, in so far as it is exclusive of their bonded investments and their stock?

A. Yes, sir.

Q. That is true?

A. Yes, that is true.

Q. And in your opinion is not the tax upon the revenue derived from all of that property—the tax upon the property itself?

A. It would be if it were made direct Mr. Gibbons.

Q. Then your answer is it is an indirect tax?

A. Well, I would like to qualify that if I may?

Q. Yes.

A. If we in Nevada endeavored to assess your personal property, and at the same time then by law, or otherwise attempted to put on a certain tax over and above that on to your gross earnings, or

something of that kind, it would be clearly invalid. But
133 I do not understand it is so invalid because it is used simply as an additional—that is to include the net earnings with the interstate, as a measure for finding the fair valuation of al- property used in all kinds of service for all lines in Nevada, on the same theory that a factory might be located in the State of Nevada, and it might not be doing any business in Nevada, but be doing a great inter-state commerce business. Clearly the factory would be worth what it was earning for the purpose of taxation, although it might be located in the State of Nevada.

Q. Do you know whether or not the Wells Fargo & Company are assessed other taxes besides the so called mileage tax?

A. Well, the only other tax I know of is the license tax that is upon the transportation of ores and things of that kind and bullion.

Q. Yes, and any city taxes?

A. I presume they pay local taxes.

Mr. Baker: He says pays it—it is assessed you mean. It is so assessed to it.

Mr. Gibbons: That is all.

Recross-examination.

Mr. Baker:

(Q.) These figures you have given of $87,933.07, shows the net profit on inter-state traffic. Does that include the over-head traffic in Nevada?

A. No, it does not.

134 Q. Have you not some data Mr. Shaughnessey—and we are entitled as we understand the law, and you seem to be a pretty good lawyer—what are we entitled to, do you say, or are we entitled to a per mileage of that overhead traffic which passes through our State?

A. We are—yes. That has been the principle, and that principal has been laid down by the United States Supreme Court in the case of the United States Express Company vs. Minnesota, 223 United States, decided March 23rd, of this year.

Q. Then that should not be eliminated, but would be properly included?

A. Yes. That as I have explained before, that that was considered in making up this statement in controversy, in the absence of our ability to get a mileage pro-rate of those over-head earnings we took the total earnings for this in and out business, and the local business, and assumed that that would be fair, and no more than fair, probably less than fair to the State of Nevada, and we used it simply as a measure and applying it in this manner of taxing the inter-state commerce.

Q. You used it simply as a yard stick?

A. Simply as a yard stick for finding the valuation of the property.

Mr. Baker: That is all.

Redirect examination.

135 Mr. Gibbons:

(Q.) Do you want to convey the idea that you did not intend to tax the inter-state commerce?

A. Yes, sir, that is exactly the case.

Q. You also know that it means no difference whether you intended to or not, so we will look at the record to see whether you actually did or not?

A. Certainly that is agreed Mr. Gibbons.

Mr. Baker: I suppose you have got Mr. Shaughnessey now in the position where he levied the taxes.

Mr. Gibbons: His ideas, such as they were, are of record.

Mr. Baker: What would you say would be a fair estimate of the over-head traffic in Nevada.

Mr. Gibbons: I submit the question is incompetent, irrelevant and immaterial, because it had been conceded by the witness that that was not used in any of the assessments.

Mr. Baker: But it should have been used if we had had it.

Mr. Gibbons: What is this? A Court of justice? or are we here on a hypothetical case, and to say a certain thing should have been used if they had had it. Are we to take evidence upon what was actually done or not, or are we just trying a hypothetical case.

(Further discussion.)

Mr. Gibbons: I submit it is also incompetent upon the further ground that Mr. Shaughnessey, has testified time and again he did not have any data which he could arrive at any estimate or
136 calculation upon it, and that was the reason he did not use it.

The Court: That is the way I understood his testimony.

(Further discussion.)

The Court: The objection may be overruled.

Mr. Gibbons: An exception may be noted upon the ground that it is incompetent, irrelevant and immaterial, because the witness has stated that he had no data or information at his hand upon which he could make any such estimation or approximation, and because the witness has already stated in reply to a question of mine that the estimate which he has just spoken of is an estimate made from figuring on railroad earnings, and not from any figures on the business—over-head business done by this defendant Wells Fargo & Company.

Mr. Baker: Oh, that is all Mr. Shaughnessey.

Mr. Gibbons: That is all.

Mr. Gibbons: Call Mr. Leonard?

Testimony of H. M. Leonard, who, being called, having been heretofore sworn as a witness in this case, upon his oath, testifies as follows, on behalf of the defendant, to-wit:

137 Direct examination:

Mr. Gibbons:

(Q.) Mr. Leonard, you were the duly elected, qualified and acting Assessor of Humboldt County for the year 1910?

A. I was.

Q. As such assessor did you attend the meeting of the Board of Assessors at Carson City, Nevada, January, 1910?

A. Yes, sir.

Q. And did you as such Assessor of then County of Humboldt participate in the meeting of the Board during that meeting?

A. Yes, sir.

Q. And you voted upon the motion, and upon the question of valuing or assessing the Wells Fargo & Company at the rate of three hundred dollars per mile for every mile of railroad over which it transacts its business, or carried its business?

A. Yes, sir.

Q. What was the total tax rate of the County of Humboldt for the year of 1910?

A. That does not show it?

Q. It does not show it?

A. No, sir.

Q. Do you know Mr. Leonard?

A. No, I do not, but I could find out.

Q. How long would it take you to find out about it?

138 A. About five minutes.

Mr. Gibbons: Will the Court allow us that time?

The Court: We will take a recess for five minutes.

(Recess.)

Testimony of H. M. LEONARD, resumes.

The Court: You may proceed.

Mr. Gibbons:

(Q.) Now Mr. Leonard, can you give me the total tax rate for the County of Humboldt for the year 1910?

A. 1.57.

Q. 1.57?

A. That was the State and County.

Q. That would be all taxes levied upon the real and personal—the tangible personal property situated within the County?

A. Yes, outside of the town.

Q. Outside of the town?

A. Outside of the town.

Q. Suppose the personal property was situated within the town Winnemucca, what would be the total tax rate?

A. 2.07

Q. 2.07?

A. Yes, sir.

Q. Now what about the person or corporation—we are just
139 supposing a case—ow-ing personal property—tangible property situated within the town of Winnemucca in the year of 1910 which amounted to $383.98, that was its whole value; Now assuming that it was taxed at that sum, what would have been the total tax for that year at that rate upon the sum of $383.98?

A. ——.

Q. What was the total tax? 2.05?

A. 2.07.

Q. 4.10 *would* it not?

A. Yes, sir.

Q. Approximately?

A. About.

Q. Now was the tax higher in—what other cities are there within the county—Lovelock is that a city?

A. Lovelock.

Q. That is the only other City is it not?

A. As nearly as we have.

Q. I mean simply legally speaking.

A. Yes.

Q. Where there would be an extra tax?

A. Yes, sir.

Q. What would be the total tax upon property situated within the City of Lovelock?

A. In 1910?

Q. Yes.

A. 2.82.

Q. $2.82?

140 A. Yes, sir.

Q. Now if any party owned $383.98 worth of personal property in Lovelock during the year of 1910 what would have been the total tax upon that?

A. About $10.80.

Q. Now what would you say the tax would have been upon the property situated in Winnemucca?

A. It would have been about $8.00.

Q. About $8.00?

A. Yes, sir.

Q. It would be about $8.20 instead of $4.20 would it not as I stated?

A. Yes, sir.

Q. Did you assess in the year of 1910 to the Wells, Fargo & Company any personal property—tangible property situated in the County of Humboldt?

A. I did not.

Q. Did you assess to it any real estate?

A. I did.

Q. What real estate—the real estate you have already testified to the other day?

A. No, that was another assessment.
Q. What was that?
A. It consisted of some patented mines.
Q. Will you bring into Court that assessment?
A. The roll?
Q. Yes.

A. Do you want the assessment roll or statement?

141 Q. Yes. Were the taxes paid by Wells, Fargo & Compar, upon the patented land?

A. I believe not; they were paid by——
Q. Well, anyway the taxes were paid?
A. They were paid—yes.
Q. I wish you would bring in the assessment roll?
(Assessment roll brought in and produced in Court.)

Mr. Gibbons: We offer in evidence, and will read into the record a portion of the Assessment roll of Humboldt County, State of Nevada, for the year 1910, found on page 276 showing an assessment to Wells, Fargo & Company of certain real estate situated in the County of Humboldt, State of Nevada, which reads as follows:

[Here follows paster table marked p. 142.]

Tax payer's name.	Road district.	Real Est. No. acres.	Value of real estate or possessory claim and improvements.	Total value	County high school.	Total tax.
Wells, Fargo & Co., P. O. San Francisco, Calif.....	Rebel Creek Mining District.					
	"Patented Mines" Patent No. 12,567, Mineral Certificate 343, Ohio M. & M. Co. "The Ohio Vein Lode" in the Rebel Creek Mining District, being Lot 37 and containing	20.66	500.00	....	....	....
	Patent No. 12,590, Mineral Certificate 344, Ohio M. & M. Co. known as "Scioto Lode" Mining Claim in Rebel Creek Mining District, being Lot 38 and containing	17.89	500.00	....	....	....
	Patent No. 12,591, Mineral Certificate 345, Ohio M. & M. Co. Mine known as the "Pride of the Valley Lode" Mining Claim in the Rebel Creek Mining District being Lot 39 and containing..	20.66	500.00	1500	1.50	$23.55
	Total Acres	59.21				
Paid Nov. 17, 1910.						

143 Mr. Gibbons: That is all.

Cross-examination.

Mr. Baker:

(Q.) Who paid those taxes?
A. Mr. Ferguson—Donald Furgerson.
Q. Did he pay it for the Wells Fargo Company, or did he represent the Company that you know of? Do you know whether or not he represented himself to be paying it for the company?
A. No, he bought the mines.
Q. What, say?
A. No, he bought the mines from Wells, Fargo & Company.
Q. What, say—beg your pardon?
A. I say he bought the mines from Wells, Fargo & Company.
Q. And paid the taxes?
A. Yes, sir.
Q. He bought them after the assessment was made?
A. ——.

Mr. Baker: That is all.
Mr. Gibbons: That is all,—you are excused.

The Court: We will take a recess until the usual time two o'clock this afternoon.

144 Afternoon Session.

Friday, October 18th, A. D. 1912—2 o'clock.

The Court: You may proceed.

Mr. Gibbons: I neglected to bring with me a certified copy of the Articles of Incorporation of the Defendant Company, and I will ask permission of Counsel for the opposite side, for permission to send up a certified copy, and ask that it be stipulated it may then be received in evidence, and considered as admitted and read into the evidence.

The Court: Send it up later.
Mr. Gibbons: Yes, I will send it up later.
The Court: Very well.
Mr. Callahan: That is satisfactory to us.
Mr. Gibbons: The complaint alleges that Wells Fargo & Company is a corporation organized under the laws of the State of Arizona, and it is organized under the laws of Colorado. I would like to have that confessed so that the record may be kept straight.
Mr. Baker. We confess the error.
Mr. Gibbons: You simply confess the allegation in the Defendant's answer that it is organized and incorporated under the laws of Colorado, which is true.
Mr. Baker: It may be understood we confess that error in order to keep the record straight. That is confessed for the purpose of keeping the record straight.

145 Mr. Gibbons: Mr. McMichael will you please take the Stand?

Testimony of E. E. McMICHAEL, who, being called, and duly sworn as a witness on behalf of the Defendant, upon his oath, testifies as follows, to-wit:

Direct examination.

Mr. Gibbons:

(Q.) Your name is E. E. McMichael?
A. McMichael, E. E.
Q. Are you connected with the defendant the Wells Fargo Company?
A. Yes, sir.
Q. What position do you hold?
A. Division Superintendent.
Q. Where are you stationed?
A. At Salt Lake City.
Q. What territory do you cover under your supervision?
A. Nevada and Utah.
Q. How long have you held such position?
A. Since the first of August, 1911.
Q. How long prior to the first of August, 1911, had you been connected with Wells Fargo & Company.
A. Approximately twenty years.
Q. Approximately twenty years?
146 A. Yes, sir.
Q. You were connected with them in the year of 1910?
A. Yes.
Q. What position did you then hold?
A. I was route Agent.
Q. Where were you stationed?
A. Stationed at various points, Reno and Carson City.
Q. You were sort of migratory?
A. Yes.
Q. Was the Wells Fargo & Company by any of its officers or agents present at a meeting of the Baord of Assessors in January 1910 at Carson City?
A. Not as I know of.
Q. Did it receive any notice that the State Board of Assessors would at that time place valuations upon any of its property?
A. Not to my knowledge.
Q. You have endeavored to ascertain, have you not whether or not any notice was received?
A. I have.
Q. And the records of the Company, so far as you have examined, and so far as your examination goes, shows that no notice was received by the Company that it would be assessed?
A. No, no notice was received that I could find.
Q. I will show you a statement which purports to set forth the

location and value of the tangible personal property owned by the Wells Fargo & Company, and situated within the State of
147 Nevada, and used by Wells Fargo & Company in the conduct of its business as a carrying concern: Is that statement so far as that statement was compiled, was it not for the purpose of showing the amount of personal property—tangible personal property owned by the Company in this State?

A. Yes, sir.

Q. And to the best of your knowledge and belief is that full and accurate?

A. Well, of course you know that property depreciates. But as far as we can ascertain that is its actual value.

Q. As far as you can ascertain that is the actual value?

A. Yes, sir.

Q. And that was the actual value on what date?

A. June first, 1911.

Q. June first, 1911?

A. Yes, sir.

Q. Did the Company in 1910 own any other and different property than that that is set forth in that inventory?

A. Within the State of Nevada.

Q. Yes, within the State of Nevada?

A. Well, I don't think so.

Q. It did not own any greater amount of property?

A. It might have owned a less or a greater amount.

Q. Well, would it have been appreciable?

A. No. Not to particularly change the value.

Mr. Gibbons: I wish to offer this in evidence for the pur-
148 pose of showing the tangible personal property owned by the Company, and situated within the State of Nevada. I would like to have this marked Defendant's Exhibit No. 3.

The Court: It may be admitted and marked Defendant's Exhibit No. 3, if there is no objection.

Mr. Baker: No objection.

The Court: Let it be so marked.

(So marked by the Clerk as Defendant's Exhibit No. 3.)

Mr. Gibbons: For the information of the Court and counsel I will read from this statement and this inventory the value of the tangible property of the Company situated within the County of Humboldt, State of Nevada.

Humboldt County:

Golconda	26.13	
Imlay	13.63	
Lovelock	115.55	
Mill City	13.13	
Rye Patch	3.00	
Winnemucca	212.54	
		389.98

Q. Do you know how long Wells Fargo & Company have been doing business, both inter-state and intra-state in the State of Nevada?

A. I could not tell you exactly, or give you exactly the year, but approximately I would think for the last fifty years.

Q. That would be since the year '62?

A. Certainly. Yes.

149 Q. During the past ten or twenty years has Wells Fargo & Company maintained offices in different parts of the United States for the transaction of its express business?

A. Please repeat that question.

Q. Read the question.

(Reporter reads the question.)

Q. During the past ten or twenty years has Wells Fargo & Company maintained offices in different parts of the United States for the transaction of it- express business?

A. Yes.

Q. Does the Wells Fargo & Company express system extend further than the United States?

A. Yes, sir.

Q. To what country or countries does it extend?

A. We do business in Mexico.

Q. And you also do business across the ocean do you?

A. We have an office in London.

Q. You have an office in London?

A. Yes, sir. Also have offices in some of the territories outside of the United States. In Honolulu we have an office.

Q. You have an office in Honolulu?

A. Yes, sir.

Q. And the Company is engaged in transporting express matter from different states in the United States and from Honolulu and London, and over its water lines, as well as from different states in the Union?

A. Yes, sir.

Q. And also from the different states of the United States
150 and other parts of its whole system into and out of Mexico?

A. Yes, sir.

Mr. Gibbons: I suppose we could save a little time here if counsel on the other side will admit that for more than forty years last past Wells Fargo & Company has done business in the State of Nevada, and has had offices located here, which it used in the transaction of its inter-state and intra-state express business?

Mr. Baker: That is a fact.

Mr. Gibbons: I think that is a fact. I know it has been doing business here ever since 1860.

Mr. Baker: I have not been here, and therefore I plead guilty of not knowing, as I have not been here all of that time. That probably is a fact, and no question about that.

Mr. Gibbons: And that all of that time during that period and since, it has been established as a Company, it has been engaged in the inter-state and intra-state commerce business?

Q. In fact Mr. McMichael the Wells Fargo & Company was first established in New York, or in the East some place?

A. I think it was organized in 1852, if my information is correct, but I am not positive. But I am not positive when or where it was first organized.

Mr. Gibbons: The object of this evidence, and this admission, is simply for the purpose of showing how long prior to the
151 year 1910 the Company has been engaged in business within the State, so that there could be no objection made to the proposition that these taxes were levied on the principal that the State had a right to tax the corporation prior to its entering the State.

Mr. Baker: We will not raise that point.

Mr. Gibbons: Mr. Shaughnessey just called my attention to the fact that Wells Fargo & Company was incorporated in 1866—that is the present corporation, but they had done business before that, was back in 1852 as a copartnership. Their principal business at that time was carrying gold dust from California after the gold fields were discovered.

Q. Now in addition to the personal property which is set forth in that list or schedule I have given you, what else does the express company own within the State?

A. ——.

Q. The company owns a couple of buildings in the State of Nevada, does it not?

A. I think it owns three.

Q. You think it owns three?

A. Yes, sir.

Q. They own their depot building at Reno?

A. Yes, sir.

Q. And also one at Palisade?

A. Yes, sir, and a small building at Carson.

Q. What would — say was the value of the building at Carson?

152 A. Approximately about three hundred dollars I would judge.

Q. Approximately three hundred dollars?

A. Yes, sir.

Q. The building there at Palisade cost the Company $1,562.53 did it not?

A. That is the cost price. I only know or judge that was taken from the record.

Q. Do you know Mr. Graham?

A. Yes, sir.

Q. What is he?

A. Mr. Graham is the Traffic Manager of the Company and is located at San Francisco.

Q. And as such Traffic Manager does he have access to the books of the corporation?

A. Yes, sir.

Q. Is that his signature?

A. Yes, sir, that is his personal signature.

(Paper shown witness.)

Mr. Gibbons: Now I will ask counsel—I have a letter in my hand addressed to myself signed by Mr. Graham in which I ask him for information as to the cost of the buildings—now that is the paper I refer to.

Q. I will state Mr. McMichael that the depot building at Palisade cost $1,562.52—you know that building do you?

A. Yes, sir.

Q. In your opinion, and from the information conveyed in this letter, and from what you know of the building, and from
153 seeing it, would that be as much as it was worth?

A. That is considerably more than it is worth now.

Q. Now the depot building at Reno cost, and the cost price of that as reported was $4,904.00. Would you say that that was in excess, or less than its value at the present time?

A. Well, I would judge that that would be a very fair valuation for that building at the present time.

Q. That is the building on the railroad right of way near the depot in Reno is it not?

A. Yes, sir.

Mr. Gibbons: Now adding the personal property which has heretofore been in evidence and the real estate, for the information of court and counsel, I will say it aggregates $21,766.51.

I think that is all.

Exhibit No. 3 for Defendant reads as follows, to-wit:

154 *Recapitulation.*

Inventory Value of Equipment June 1, 1911.

State of Nevada.

County.	Value.	
Churchill	$187.97	
Clark	72.70	
Douglas	176.39	
Elko	511.16	
Esmeralda	1710.35	
Eureka	204.20	
Humboldt	383.98	
Lander	118.08	
Lyon	144.08	
Mineral	359.90	
Nye	1479.01	
Ormsby	877.69	
Storey	245.95	
Washoe	3459.42	
White Pine	283.68	
Line Personal Property	101.99	
		$10,316.35

Property on Railway Right of Way.

	Value.	
Eureka County:		
Palisade	594.31	
Lyon County:		
Mason	19.77	
Ormsby County:		
Carson City	150.00	
Washoe County:		
Reno	294.24	
		1,058.32
		11,374.67

155 Inventory Value of Equipment June 1, 1911.

June 1, 1911.

State of Nevada.

	Value.	
Churchill County:		
Fallon	73.55	
Hazen	106.98	
Lahonton	3.63	
Parran	3.63	
		187.79
Clark County:		
Searchlight	72.70	72.70
Douglas County:		
Gardnerville	50.13	
Glenbrook	123.13	
Minden	3.13	
		176.39
Elko County:		
Carlin	20.06	
Cobre	238.44	
Currie	3.13	
Deeth	47.00	
Elko	50.75	
Halleck	116.73	
Montello	18.55	
Tecoma	3.25	
Wells	13.25	
		511.16

		Value.	
Esmeralda County:			
	Blair	67.83	
	Goldfield	1588.00	
	Millers	65.50	
			1710.33
156			
Eureka County:			
	Beowawa	103.25	
	Palisade	100.95	
			204.20
Humboldt County:			
	Golconda	26.13	
	Imlay	13.63	
	Lovelock	115.55	
	Mill City	13.13	
	Rye Patch	3.00	
	Winnemucca	212.54	
			383.98
Lander County:			
	Austin	63.20	
	Battle Mountain	54.88	
			118.08

Lyon County:			
	Dayton	6.63	
	Fernley	3.13	
	Ft. Churchill	6.63	
	Hudson	3.63	
	Mason	28.13	
	Mound House	15.32	
	Wabuaka	35.73	
	Yerington	44.88	
			144.08
Mineral County:			
	Hawthorne	121.25	
	Luning	2.00	
	Mina	151.51	
157	Schurz	53.26	
	Sodaville	3.63	
	Thorne	28.25	
			359.90
Nye County:			
	Beatty	3.13	
	Bonnie Clair	3.13	
	Rhyolite	154.98	
	Leland	3.13	
	Springdale	3.63	
	Tonopah	1311.01	
			1479.01

	Value.	
Ormsby County:		
Carson City	877.69	
		877.69
Storey County:		
Gold Hill	21.50	
Virginia	224.45	
		245.95
Washoe County:		
Clark	3.13	
Reno	3158.99	
Sparks	81.05	
Verdi	83.13	
Wadsworth	133.12	
		3459.42
White Pine County:		
Cherry Creek	3.13	
East Ely	47.81	
Ely	152.61	
Kimberly	3.63	
McGill	71.10	
Ruch	3.63	
		283.68
Train Service	101.99	101.99

State of Nevada vs. Wells Fargo & Co. No. 1815. Defendant's Exhibit No. 3, in evidence. Filed Oct. 18, A. D. 1912. J. W. Davey, Clerk, by —— ——, Deputy.

158 Cross-examination.

Mr. Baker:

(Q.) Speaking of the notice Mr. McMichael which was not received by the Company, or that it did not receive. Would you have received the notice if it was sent?

A. No. The Vice Pres*en*dent or the General Manager would receive the notice, or the Superintendent in charge of the Division at that time.

Q. Do you know whether any notice was received?

A. I was told that they did not receive any.

Q. But you don't know of your own knowledge?

A. No, I do not any further than the information received from the head office.

Q. Are you familiar with the meeting of the State Board of Assessors in this case?

A. Only from hearsay.

Q. You know that there was such a Board?

A. Oh, yes, I understand there is such a board.

Q. Do you know when they meet?

A. No, I don't remember whether I noticed the exact date of the meeting in 1910—no, in fact I don't believe I was very familiar with their meeting in 1910.

Q. You know that they meet the first part of January sometime?

A. Well, not in 1910.

Q. You do not?

159 A. I don't think I was in Nevada at that time.

Q. Do you know whether any member of the corporation knew it?

A. No, I could not say that either.

Q. And you don't know whether they as a matter of fact knew?

A. No, I could not positively say whether any member of our corporation knew it, or knew the exact date the Board met.

Q. And you could not say that they did not know it?

A. No, I would not.

Mr. Baker: That is all.

Mr. Gibbons: I think that is all. We will call Mr. Lawsan.

Testimony of Y. C. LAWSAN, who, being called, and duly sworn as a witness on behalf of the Defendant, upon his oath, testifies as follows, to-wit:

Direct examination.

Mr. Gibbons:

(Q.) What is your name please?

A. Y. C. Lawsan.

Q. Are you connected with the Wells, Fargo & Company?

A. Yes, sir.

Q. And in what capacity are you now connected with it?

160 A. Just now I am Special Representative in San Francisco.

Q. How long have you been connected with Wells, Fargo & Company?

A. About thirty years,—twenty-nine to thirty years.

Q. Prior to being their Special Agent and Representative in San Francisco what was your official connection with the company?

A. I was twelve years Assistant Auditor of the Company and also Agent at Berkeley, California.

Q. Have you the figures or data showing the net intra-state earnings of Wells, Fargo & Company for the year 1910?

A. Yes.

Mr. Gibbons: I offer in evidence the statement purporting to be a statement of, and showing the net intra-state earnings of Wells, Fargo & Company for the year of 1910.

Q. Who is the present General Auditor of Wells, Fargo & Company?

A. There is no General Auditor now—that position is abolished and there is now a Controller.

Q. There is now a Controller?
A. Yes, sir.
Q. Who was the Auditor in 1910?
A. Richard Burr.
Q. As that stamp shows?
A. So far as I know that is his office stamp.

(Paper shown witness.)

161 Mr. Gibbons: We offer that in evidence.

Q. This is a correct statement of it?
A. So far as I know that is correct. I know his signature and I know his office stamp.

Mr. Gibbons: Ordinarily of course a stamp would not name it authentic, but I know we have to have the exact figures to show these things, and as to how they go through the process of figuring, I think Mr. Shaughnessy will agree with me that it would encumber the record very much.

Mr. Baker: You have that from headquarters as I understand?

Mr. Gibbons: That is from headquarters, furnished me through Mr. Lawsan upon my request therefor, for the net earnings of the year. It was figured out and transmitted to me.

Q. Where did you receive that from?
A. That was handed to me from the Vice President's office.

Mr. Baker: I do not want to — finical about it.

Mr. Gibbons: It would be so easy to discover anything that was not true, because of the reports to the Interstate Commerce Commission, and it could be checked up very easily.

Mr. Baker: I would not suggest you would do anything like that, or do any such a thing as that, that it would need checking up. I just want to have your knowledge *as* as to protect myself.

162 The Court: It may be marked Defendant's Exhibit No. 4 and be admitted in evidence.

(So marked by the Clerk.)

Exhibit No. 4 in evidence is as follows, to-wit:

Statement.

Wells Fargo & Company's Operations Within the State of Nevada for the Year 1910.

Receipts from express operations—Intrastate	$76,342.13
Express privileges—Railroads and Stages	34,810.74
Taxes and licenses	2,543.26
Operating expenses	32,762.57
In pencil	70,116.57

Stamped: "Wells Fargo & Co. New York Jan. 11, 1911 Richard Burr General Auditor."

State of Nevada vs. Wells Fargo & Co. No. 1815. Defendant's Exhibit 4 in evidence. Filed Oct. 18 A. D. 1912. J. W. Davey, Clerk, by —— ——, Deputy.

163 Mr. Gibbons:

(Q.) Those calculations there in pencil have been made by you have they not?

A. I am not sure about that.

Q. Do you know whether or not the net earnings in 1908 were more or less than the net earnings in 1910?

A. Of my own knowledge I do not.

Q. Have you any opinion or information which would enable you to give an opinion upon that matter?

A. In 1910 as against 1908?

Q. Yes.

A. No more than the document or paper you show me.

Mr. Baker: We ask that a verified copy be submitted to us of these figures so we can check them up.

Mr. Gibbons: Yes, I will have Mrs. Shewalter make a copy and give you. Of course it is an exhibit in the case and you can get a copy of it any time you may desire anyway.

Q. I hand you a memoranda and ask you *you* state from the memoranda you have in your hand what were the net earnings of Wells Fargo & Company for the year of 1908?

A. $15,795.93.

Mr. Baker: That is you do not know that of your own knowledge but just from the figures?

A. Just from the memoranda.

Mr. Gibbons: Show you a book entitled Annual Report of Wells Fargo & Company, New York, to the Inter-state Commerce Commission of the United States for the year ending June 30th, 1910,
164 and call your attention to page 65 thereof, and ask you to state if you know the signature purporting to be the signature of E. A. Stedman, Vice President?

A. I should say that was his own signature.

Q. And do you know the signature of Richard Burr, General Auditor?

A. Yes, sir.

Q. Can you state whether or not the signature purporting to be the signature of Richard Burr, General Auditor, is his own signature?

A. It is his own hand writing.

Q. It is his own hand writing?

A. Yes, sir.

Q. I will ask you to take that report and state to the Court from yo-r own knowledge, or from any data contained in that report the total amount of property owned by the Wells, Fargo & Company, and situated without the State of Nevada, which is used by Wells, Fargo & Company in the transaction of its express businness? And

when you give your testimony Mr. Lawsan, if you will kindly refer to the page that you use, so that Mr. Shaughnessy will be able to follow you.

A. Do I understand that you ask for the real property and equipments?

Q. I am asking for all of the property owned by Wells, Fargo & Company and situated outside of the State of Nevada, which is used by it in the conduct of its express business, omitting its investments such as bonds and securities, and omitting also the real estate
165 which is owned by Wells, Fargo & Company, if any, but not used in the conduct of its business?

A. $4,251,939.16.

Q. What page are you quoting from?

A. On page 29.

Q. Can you give the court the different items that make up that sum total and its character?

A. The first is real estate used in the operation. Do you want the amount of each?

Q. Yes.

A. $734,817.99. Buildings and fixtures used in the operation $1,207,554.90. Cars $380,168.50. Horses $558,047.80. Vehicles $485,567.19. Other equipments $885,782.78.

Q. Now the figures which you have read include all of the property and equipment owned by Wells, Fargo & Company and used in the transaction of its express business, does it not?

A. I should say so—yes, sir.

Q. And that includes the property which is situated in the State of Nevada?

A. *In* includes all property.

Q. It includes all property?

A. Yes, sir.

Q. So to arrive at the amount of property used by Wells, Fargo & Company in the conduct of its express business, and which is situated outside of the State of Nevada, you would subtract the value of the property in the State of Nevada from the sum total which
166 you have given?

A. Yes, sir.

Q. I do not suppose it is necessary to do that for it is in the record. Now the figures which you have given us, includes no other property of the Wells, Fargo & Company, excepting that actually used by the company in the conduct of its express business?

A. They do not.

Q. It does not include real estate owned by Wells, Fargo & Company which is not used in it?

A. No, sir.

Q. And it does not include any bonds, or personal property, such as stocks, bonds or mortgages in which it has its money invested?

A. No, sir.

Q. Just property actually used by it in the conduct of its business as a carrying concern?

A. Property used by it in the operation.

Q. Can you give the total mileage over which Wells, Fargo & Company transact business, and transacted business in the year 1910.

Mr. Shaughnessy: Page 15.

A. Total mileage operated by Wells, Fargo & Company 60,919.84.
Q. Is that mileage subdivided?
A. Yes, sir.
Q. Just give the different sources?
A. Subdivided into States and territories, coast-wise and Mexico.

167 Q. What are the States and territories' mileage?
A. Including the Coast line steamers in the United States?
Q. I just *what* you to give this first?
A. 46,866.87.
Q. What is the coast-wise?
A. In the United States 3205 miles.
Q. What is the next item of mileage?
A. Ocean goin- mileage 9,397 miles. Mexico 1,105.48 miles. Coast-wise steamers in Mexico 345.49 miles. Total 60,919.84.
Q. What is the mileage in Nevada as shown by this report?
A. The mileage in Nevada is 16,074.56; steamer rout- Mileage 20.25. steam-boat mileage; 93.25 stage line mileage. Total 17,088.06.
Q. That includes the stage coa-h mileage, steamer mileage and railroad mileage?
A. Yes, sir.
Q. That steamer mileage is on Lake Tahoe?
A. I think so—I think it is on Lake Tahoe.

Mr. Gibbons: I think that is all.

Cross-examination.

Mr. Baker:

(Q.) Do you know what is included in that expense where you arrive at the $6,225.61 net?
A. The whole expenses.

168 Q. What are they? What do they consist of?
A. There would be the expense of all offices inside the state together with administration expenses, everything excepting taxes.
Q. It does not include the taxes?
A. No, sir, the taxes are in there separately—that is the Nevada tax.
Q. They are keeping this separate, are they, in that report?
A. ——.
Q. Do you know what amount of through business passes through the State of Nevada?

Mr. Gibbons: I submit that is not proper cross examination. Well, I will waive that.

A. No, I do not.

Mr. Baker:

Q. You do not know that?

—. ——.

Q. Does your company keep a certain account, or separate account, showing the amount of business coming from without the state to within, and from the State to without the State, and the through business passing through the *business passing through the* State?

A. No, they do not.

Q. The Company does not keep that?

A. No, sir.

Q. And therefore you would be unable to submit any report to this court showing the amount of business, is that right?

A. I would not be able to do it; anything could be done.

169 Q. The reason I thought it could not was that Mr. Christeson said they kept no such accounts and they would be unable to make it.

A. Excepting all operation expenses. It can be done all right.

Q. I mean for 1910?

A. It can be done from the work now?

Q. But whether they can do it for 1910?

A. Yes, sir, I believe the Inter-state Commerce Commission compels them to keep their way bills so many years.

Q. And it could be done?

A. It could be done.

Q. Do you know why that was not done in the report sent to the Railroad Commission in this State?

A. No, I do not.

Mr. Baker: That is all.

Redirect examination.

Mr. Gibbons:

(4.) Mr. Lawsan you have been, and were, Assistant Auditor for more than eight years—eight or ten years, say?

A. Yes, sir.

Q. In order to arrive at the date concerning which Attorney General Baker has questioned you, what do you estimate would be the cost to make it to Wells, Fargo & Company?

A. To take in one State?

170 Q. Or for instance to take and ascertain the amount of business that came into Nevada from all outside points, and the business that *when* from Nevada to all outside points and apportion that in relation to the mileage travelled within the State to outside of the State, and also apportion according to the mileage the overhead business passing through the State of Nevada?

A. Well, it is such a tremendous job I could not guess, but any way from fifty to one hu*n*dred thousand dollars or something like that.

Q. In other words Mr. Lawsan — would not be necessary for the

company to follow in that investigation, follow each way-bill from its start to its end?

A. To give you an idea of the proportion particularly, there are about four million way-bills a month, and that would be about fifty million way-bills a year. Now if we take an office in Binghamton, New York, we will say, in order to arrive at Nevada's proportion of the matter, it leaves Nevada for Binghamton office, and not only from Nevada, but from every other point West of Nevada. Now that information could be dug up from the messengers' names appearing on the package or those way-bills as to what point it entered Nevada, and at what point it left Nevada. But it would be a tremendous piece of work.

Mr. Baker: That is what Mr. Christianson said—not that they could not do it, but that it would be such a tremendous task.

171 A. It could be done.

Q. Are they not doing that — Minnesota?

A. I do not know.

Mr. Baker: That is all.

Mr. Gibbons: That is all.

Mr. Baker:

(Q.) Do you know whether or not Mr. Lawsan it is a fact that California keeps a segregation of their business?

A. No, I do not.

Q. But it could be made?

A. It could be done regardless of expense.

Mr. Baker: That is all.

Mr. Gibbons: That is all. The defense rests.

The Court: The defendant rests?

Mr. Gibbons: Yes, your Honor.

Mr. Baker: We have no rebuttal?

Mr. Gibbons: It is understood that a certified copy of the Articles of Incorporation of the Wells Fargo Express Company may be put in whenever they are forwarded according to your stipulation?

Mr. Baker: Yes.

The Court: Enter the order that this case be submitted on briefs Mr. Clerk. That the plaintiff have twenty days from this date in which to serve and file its opening brief. That the defendant have fifteen days from the date of receiving plaintiff's opening

172 brief, in which to file and serve its brief. And that the plaintiff have ten days from the date of receiving a copy of the defendant's brief in which to file and serve its reply brief.

173 STATE OF NEVADA,
County of Humboldt, ss:

I, A. R. Shewalter, Official Reporter pro tempore of the Sixth Judicial District Court of the State of Nevada, in and for the County of Humboldt,

Do hereby certify:

That as such official reporter pro tempore I was present in said court and took verbatim shorthand notes of the testimony given, and proceedings had therein in the case of the State of Nevada, Plaintiff, vs. Wells, Fargo & Company, Defendant, No. 1815 on October 17th and 18th A. D. 1912.

That the foregoing transcript consisting of pages 1 to 127 both inclusive, contains a full, true accurate and correct transcription of my said shorthand notes so taken as aforesaid, and is a full, true, accurate and correct statement of the testimony and proceedings had therein to the best of my skill and ability.

Dated at Winnemucca, Nevada, October 26th, 1912.

A. R. SHEWALTER,
Official Reporter pro tempore.

174 The evidence being closed, the cause was thereupon submitted to the Court and the Judge thereof for decision upon briefs, and thereafter the said cause having been fully considered by said court, and duly argued by the attorneys for the respective parties, said cause was duly submitted to the Court for decision.

That thereafter, to-wit, on the 2nd day of December, 1913, the said Court duly made and caused to be entered in the Court records of the County of Humboldt, State of Nevada, its decision in writing, which decision is as follows:

"In the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt.

No. 1815.

STATE OF NEVADA, Plaintiff,
vs.
WELLS FARGO & COMPANY, a Corporation, Defendant.

Decision.

In this action the State of Nevada seeks to recover from the defendant $691.53 for taxes on personal property claimed to be due from the company in Humboldt County for the year 1910, together with ten per cent damages for the non-payment thereof and the additional penalty of twenty-five per centum required by law, and costs.

The taxes were levied upon that certain property belonging to Wells, Fargo & Company, to-wit: Right to carry express and right to transact all other business commonly done and transacted by
175 Wells, Fargo & Company, over the railroad operated by the Southern Pacific Company within the County of Humboldt on which the said Wells, Fargo & Company operates their express business.

The said railroad mileage in Humboldt County is 140.14 miles and the rate at which said taxes were levied is $300.00 per mile.

The action was tried before the court without a jury. The case was submitted on briefs, so well written on each side as to greatly clarify the questions which the court has been required to consider and determine.

The court has reached the conclusion that the plaintiff has established its case by a fair preponderance of all the evidence; that the constitutional objections urged by defendant cannot be sustained, and that plaintiff is entitled to recover as prayed for in the complaint. I will briefly give the grounds of this opinion.

The delinquent tax list of Humboldt County, Nevada, for the year 1910, duly certified by the County Auditor of Humboldt County, Nevada, which showed the taxes on the defendant's property were delinquent and unpaid which was admitted in evidence, together with the testimony of the Assessor of Humboldt County showing the identity of the property described in the complaint and delinquent tax list and that the property had been assessed as personal property established prima facie the plaintiff's case. 3658 Revised Laws of Nevada, and case there cited.

It is contended by the defendant that the tax levied is so largely disproportionate to the amount of property owned by the company in the state and county as to be excessive, and constituting something more than an error of judgment on the part of the Board of Assessors; that the assessment is so excessive as to amount to a fraudulent assessment whether intended to be fraudulent or not, and that upon that ground the defendant is entitled to relief, some of the evidence of the defendant showing the value of the tangible property of the company and its intrastate earnings during the year 1910 would bear out this contention were it not for the fact that other evidence in the case establishes that during that time the company was the owner of a large amount of intangible property in this state which has been valued and assessed by the proper revenue officers. The testimony of Mr. Shaughnessy, a member of the Railway Commission and the report of the defendant company to this Commission admitted in evidence show that the defendant company was the owner of intangible property in this state in 1910 sufficient in amount and value to preclude the court, in the absence of evidence tending to show fraud, from holding that the tax is excessive.

The action of the Board of Assessors in fixing the valuation of the defendant's property is conclusive in the absence of fraud or of facts which would amount to a constructive fraud.

176 It appears that the company has comparativeiy little tangible property in the state, yet its net earnings on its traffic between points in Nevada and from points within to without the state, and from without to within the state during the year 1908 were $291,084.85, exclusive of its earnings on traffic that passed across the state during that time.

This revenue producing power of express companies has great value and has been declared to be property of a taxable character by the Supreme Court of the United States. Adams Express Company vs. Ohio State Auditor 165 U. S. 194. The defendant urges that the

the statute creating the State Board of Assessors and prescribing their duties as amended in 1903 does not authorize the taxation of express companies. It provided by section 5 of the revenue act of this State that all property of whatsoever kind and nature within this state shall be subject to taxation. In this section are enumerated certain particular exceptions which do not include the property of express companies.

The term "all property of whatsoever nature and kind" is broad enough to and does include intangible as well as tangible property. The statute of 1901 creating the State Board of Assessors, was enacted, "to provide for a more uniform valuation and assessment of property in this state" as expressed in its title.

By its terms as amended in 1903, the Board is given power and required to establish a valuation on all railroads, telegraph and telephone lines *ect.*, and upon all other kinds of property which in its judgment can be valued and assessed more uniformly by said assessors acting collectively, than by the several county assessors acting separately. The Legislature intended to vest the Board with no discretion concerning the classes of property enumerated in the statute, but required it to establish a valuation on such classes. On the other hand the Legislature vested the Board with discretion to either establish a valuation on all other kinds of property or any thereof, not exempt by law, or to leave such valuation to the assessors of the various counties. There is nothing in the act from which a legitimate inference can be drawn upon any theory that the property of express companies is not intended to be included in the term "all other kinds of property in this state." To hold so would be judicial legislation by reading the exemption into the statute.

The act as it was enacted in 1901 did not particularly designate any class of property to be valued by the Board, and certainly it could not be said that it was intended by its terms that the property of railroad companies or express companies should not be valued if such property was capable of a uniform valuation. If the property of express companies was included in the general terms of the statute as it was enacted in 1901, it is still included unless omitted by the amendment of 1903.

177 The amendment of 1903 merely enumerated certain classes of property which the Board is required to value, but its terms do not omit any kind of property included in the original statute. It contains a clause which includes all kinds of property other than that specifically designated.

But it is urged that if the Legislature has vested the Board of Assessors with authority to value and assess the property in question under the clause "all other kinds of property which in the judgment of said assessors can be valued and assessed more uniformly by said Assessors" it is unconstitutional in that it is an attempted delegation of the powers of taxation.

With the exceptions enumerated in the statute creating it the Board of Assessors is given the power to determine what kind of property shall be valued by it and what kind shall be left to the judgment of the several Assessors for valuation. It is conceded by

the defendant that the Legislature has authority to confer upon different agencies the power to value different classes of property, and that this delegation of power has been declared valid by the Supreme Court of this State.

Its counsel insists, however, that the Legislature, by this act has attempted to delegate to the Board the power to determine who shall assess property, a power vested solely in the Legislature.

This contention may hardly be admitted except in a most technical sense. The Legislature has provided that certain classes of property in this state shall be valued and assessed by the State Board of Assessors, and that every other kind of property shall be valued and assessed either by the Board or by the several Assessors. For the purpose of obtaining greater uniformity in valuation the Board is vested with discretion concerning the latter kind of property. The Board can either place a valuation on it or refrain from doing so as its judgment dictates. If it refrains from exercising its powers of valuation as to this latter kind of property the law determines who shall value and assess it, viz: the several County Assessors within their respective counties.

If the Board and the respective Assessors do their duty as the law presumes they will do, no property legally taxable escapes taxation through the operation of these legislative agencies.

Neither is a tax levied upon any property by them. Nothing in the nature of a taxing power properly exercisable by the legislature itself is delegated to the Board of Assessors by the act in question.

It is a true principle of constitutional law that taxation is a prerogative of the Legislature which that branch of the government cannot delegate to another or to any Board or other agency.
178 This principle is sustained by an unbroken line of authorities many of which have been cited in defendant's brief, and if the act in question contravened this elementary rule, it would be clearly invalid. I am of the opinion that it does not.

It is contended by the defendant company that the property sought to be taxed has no situs in the State of Nevada and in the absence of necessary legislation fixing its situs in the state for the purposes of taxation and providing a method for its assessment it cannot be taxed.

The Pullman Palace Car. Co. vs. Pa. 141 U. S. 18 and several other cases decided in the Supreme Court, including the opinion by Judge Sanford in Pullman Co. v. Tamble, decided by the Circuit Court of the United States for the Middle District of Tennessee are cited as ruling on this contention. I think the question in each of these cases was entirely different from the one now pressing for solution. In the latter case it was sought to tax the cars of the Pullman Company, a foreign corporation running in and out of Davidson County in the State of Tennessee. The court held that the cars having no actual situs in Davidson County could not be taxed because the State of Tennessee had never enacted the proper legislation for their taxation either by direct or indirect methods.

The Pullman Palace Car Co. vs. Pennsylvania case dealt with the same kind of property used in interstate commerce. In neither

of these cases was it sought to tax intangible property within the state as has been done in the present case.

In Fargo vs. Hart, 193 U. S. 490 the court held that the tax provided for by the statute being a tax on property, the Board of Tax Commissioners took into account property which it had no right to take into account in fixing the assessment. The opinion of the court is concisely stated in the syllabus as follows: "Personal property owned by a non-resident express company and situated outside the state cannot be taken into account in fixing the value, for taxation, of its property within the state, on a mileage basis, on the theory that it gave the credit necessary for carrying on the business in the state, where the resulting assessment is greatly in excess of the value of the total good will of the company, measured by the difference between its tangible assets and the total value of its stock."

There is nothing in the opinion declaratory of a doctrine that before the state can tax property within the state it must have previously enacted laws providing the particular method to be employed in ascertaining its valuation. In the case now under consideration there has been no effort made to tax property having a situs outside of the state, but only to place a just value on that within. Adams Express Co. vs. Ohio State Auditor 165 U. S. 194. In Adams Express Co. vs. Ohio State Auditor 166 U. S. 218, the court points out the intangible property of an express company which has a profit
179 producing value, situate within the State, and which is legally and equitably the subject of taxation, as well as its tangible property situate therein. The court said "in the complex civilization of today a large portion of the wealth of a community consists in intangible property, and there is nothing in the nature of things or in the limitations of the Federal Constitution which restrains a state from taxing at its real value such intangible property—to ignore this intangible property, or to hold that it is not subject to taxation at its accepted value, is to eliminate from the reach of the taxing power a large portion of the wealth of the country. Now whenever separate articles, of property are joined together, not simply by a unity of ownership, but in a unity of use, there is not infrequently developed a property, intangible though it may be, which in value exceeds the aggregate of the value of the separate pieces of tangible property. Upon what theory of substantial right can it be adjudged that the value of this intangible property must be excluded from the tax lists, and the only property placed thereon the separate pieces property."

Speaking of the disparity in value which may exist between intangible and tangible, property of an express company and the injustice of permitting the former to escape taxation, the court said: "Suppose an express company is incorporated to transact business within the limits of a state and does business only within such limits, and for the purpose — transacting that business purchases and holds a few thousand- of dollars' worth of horses and wagons and yet it so meets the wants of the people dwelling in that state, so uses the tangible property which it possesses, so transacts business therein, that its stock becomes in the markets of the state of the actual cash

value of hundreds of thousands of dollars. To the owners thereof for the purposes of income and sale, the corporate property is worth hundred- of thousands of dollars. Does substance of right require that it will pay taxes only upon the thousands of doliars of tangible property which it possesses? Accumulated wealth will laugh at the crudity of taxing laws which reach only the one and ignore the other, while they who own tangible property, not organized into a single producing plant, will feel the injustice of a system which so misplaces the burden of taxation."

It is this kind of property, the intangibie property, of the defendant company, having a situs within the state, which the State Board of Assessors have valued for the purposes of taxation, and under the authority of Adam*as* vs. State Auditor, supr*s*, it must be held taxable.

This intangible property of the defendant company having a situs in the State of Nevada, and being subject to taxation
180 under the revenue laws. I am unable to perceive upon what principle it should escape taxation, so long as its actual cash value can be ascertained, simply on account of the lack of particular legislation prescribing the method to be pursued in determining such value.

From the testimony of Mr. Shaughnessy the value placed upon the defendant company's property was substantially lower than the valuation recommended by the Railway Commission. It is not to be denied that it is proper for the Legislature to prescribe some method shown by usage to be reliable, and the Legislature of this state has since enacted a law prov-ing a method to be used in valuing the property of express companies, but its failure to do so prior to the assessment complained of, does not in my opinion, relieve the defendant company from its proportionate share of the burden of taxation.

The taxes sued for in this action are not taxes prohibited by the commerce clause of the Federal Constitution. Adams Express vs. Ohio State Auditor. The foregoing case is ruling on this point. It is said the tax is void for want of notice to the defendant; and that in this respect the act creating the Board of Assessors and prescribing their duties is unconstitutional. The defendant company like all other owners of property situated in the State of Nevada is presumed to know that such property, if it does not come within the exemptions created by law, is subject to taxation. The act creating the State Board of Assessors does not provide any particular notice to taxpayers, but as it fixes a definite time and place for annual meeting to establish valuation of property, t*aht* all property within the state capable of a uniform valuation, will at such time and place, be valued by the Board for the purposes of taxation. And the defendant company through its officers is presumed to have knowledge of a law of this kind, and thus had an opportunity to be heard before the Board.

It is true that the company's property had not been valued by the Board prior to 1910, but this fact did not warrant its officers in assuming that the same course would be pursued in 1910 or thereafter.

The Board of Assessors was by law vested with the power to either

value the express company's property or to refrain from doing so. If it was not so valued by the Assessors acting collectively it became the duty of the assessors in their several counties to place a valuation on it. That its intangible property was not valued by either prior to 1910 did not make the statute a dead letter as to the property of the defendant company, and its officers were charged by law with the knowledge that the Board had the authority to value its property situate in the state, and might at any annual meeting conclude that it was proper to do so.

That the company's officers did not consider the property belonging to the company and valued by the Board in 1910, to be
181 prope-ty situated in the state does not alter the proposition of law that it did have a situs in this state.

I conclude that the act creating the State Board of Assessors is not unconstitutional in this respect, or in any other respect urged in this action.

Dated December 2nd, 1913.

EDW. A. DUCKER,
District Judge.

182 That thereafter said defendant, in due and proper time, and in compliance with the law, filed and served its Notice of Intention to move for a new trial, and its Motion for a new Trial, based upon sub-divisions 6 and 7 of Section 5320 of the Revised Laws of the State of Nevada, and in due and proper time thereafter, and in compliance with the law, said defendant filed and served its Memorandum of Exceptions and Objections relied upon in its Motion for new Trial, duly verified by L. A. Gibbons (its Attorney) that the Motion for a New Trial and the grounds thereof were well founded, and which said Memorandum of Exceptions *are* in the words and figures following, to-wit:

In the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt.

STATE OF NEVADA, Plaintiff,
vs.
WELLS, FARGO & COMPANY, a Corporation, Defendant.

Memorandum of Exceptions.

To the Above Named Plaintiff and its Attorneys; to the Judge of the Above Entitled Court, and to the Clerk of the Above Entitled Court:

The defendant, Wells, Fargo & Company, hereby specifies its Memorandum of Exceptions and Memorandum of Errors excepted to as it intends to rely upon its Motion for a New Trial herein, as follows, to-wit:

I.

That the said decision of the Court is against law.

183

II.

That the evidence in the case is insufficient to justify the decision of the court.

III.

That said decision of the court is against Law in this, that the Court should have held and decided upon the facts of the case and as a matter of law that the mileage tax imposed upon defendant was a tax upon its right to conduct and carry on interstate commerce and therefore invalid and in conflict with the Constitution of the United States, and that the evidence in the case is insufficient to justify the decision of the court in holding that such tax was not a tax upon the right of the defendant to conduct interstate commerce.

IV.

That the decision of the court is against law in this, that the court should have held that the assessment sued upon herein was made and levied by the State Board of Assessors of the State of Nevada, and that the said State Board of Assessors of the state of Nevada had no power or authority under the law to levy said assessment.

V.

That said decision of the court is against law in this, that the court should have held that the State Board of Assessors, as matter of law, had no power or authority to make the Assessment herein sued upon, and that the Act professing to give said power to said State Board of Assessors was unconstitutional and in conflict with the Constitution of the State of Nevada, in that it delegated the taxing power of the Legislature to said State Board of Assessors.

VI.

The decision of the court is against law, in this, that the court should have held upon the facts of the case that the defendant had no notice whatsoever of the assessment levied against it, and that therefore said assessment was, as to said defendant, void.

VII.

The decision of the court is not sustained by the evidence in that the court should have found, upon the evidence in the case, that this defendant had no notice whatsoever of the assessment levied against it.

VIII.

184 The decision of the court is against law in that the court should have held, from the facts of the case, that the property attempted to be assessed in the assessment herein was without the State of Nevada, and therefor- not assessable by the said State of Nevada.

IX.

The decision of the court is against law in that the court should have rendered judgment for the defendant on the ground and for the reason that no proper legislation for the taxation of the property attempted to be taxed by the State of Nevada has ever been enacted by the State of Nevada.

X.

The Decision of the court is against law, in this, that the court should have found upon the evidence in the case, that the actual worth of the stock of Wells, Fargo & Company is not greater than the tangible property owned by said defendant.

XI.

That the decision of the court is not supported by the evidence, in that the evidence fails to show that the value of the stock or shares of the defendant corporation is greater than the tangible property owned by it.

XII.

The decision of the Court is against law in this, that the court ould have held that the property attempted to be assessed is without the State of Nevada.

XIII.

The evidence in the case is insufficient to sustain the decision of the court that the intangible property of the defendant upon which the assessment herein was made has a situs in the State of Nevada.

XIV.

That the decision of the court is against law in this, that it appears from the evidence that the State Board of Assessors in fixing the value to be placed upon the Alleged property of defendant considered as a part of that value receipts received by defendant for the transaction of its purely interstate business.

XV.

That the decision of the court is against law in this, that the court should have held that the assessment and taxation sued upon herein

is contrary to the Constitution of the United States, and to that clause therein which gives to Congress the exclusive right to
185 control and regulate interstate commerce.

XVI.

That said decision of the court is ag-inst law in this, that the court should have held upon the facts of the case, that the assessment sued upon herein violates the Constitution of the United States, and particularly the 14th Amendment to said Constitution wherein it is provided that no state shall deprive any person of life, liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

XVII.

That the decision of the court is against law in this, that the court should have rendered a decision upon the facts of the case in favor of the defendant.

XVIII.

That the evidence in the case is insufficient to justify the decision of the court in this, that upon the facts of the case the court should have rendered judgment in favor of the defendant.

XIX.

The decision of the court is against law in this, that the court should have held as a matter of law that there is no law in the State of Nevada authorizing the State Board of Assessors, or any officer of the State of Nevada, or of the County of Humboldt to make, levy or impose the assessment and taxes des-ribed in the complaint.

XX.

The decision of the court is against law in this, that the court should have held that the defendant, by virtue of its character, and by virtue of the laws of the United States, had the legal right to engage in interstate commerce without being taxed therefor by the State of Nevada, and that the attempt to tax the same as set forth herein is contrary to the Constitution of the United States, and particularly that clause which provided that the Congress of the United States have exclusive power and authority "to regulate commerce with Foreign Nations, and among the several state-, and with the Indian Tribes."

XXI.

That the decision of the court is against law in this, that the Court should have held that the Congress of the United States by and through the enactment of the Carmack Amendment to the Interstate

Commerce Act, June 29, 1906, had assumed to regulate the liability of the defendant respecting interstate shipments, and that therefore the attempted taxation by the State of Nevada set forth
186 in the Complaint herein was null and void and in conflict with the Constitution of the United States in that it was an attempt to tax interstate commerce and the exercise of the right to engage therein, which had already been regulated by the Congress of the United States.

L. A. GIBBONS,
Attorney for Defendant.

STATE OF NEVADA,
County of Washoe, ss:

L. A. Gibbons being duly sworn, deposes and says, that he is the attorney for defendant in the above entitled action; that in his judgment the exceptions above set forth and to be relied upon by defendant upon its Motion for a New Trial are well taken in law.

L. A. GIBBONS.

Subscribed and sworn to before me this 17th day of December, 1913.

C. F. BURTON,
Notary Public in and for the County of Washoe, State of Nevada.

That said Court filed its Findings of Fact and Conclusions of Law, ordering and directing judgment accordingly to be made and entered in said Court at Winnemucca, County of Humboldt, State of Nevada; that thereafter, and within the time allowed by law, and in compliance with law, said defendant duly filed and served its Exceptions to the Findings so made by the Court, which exceptions are in the following words:

In the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt.

187 STATE OF NEVADA, Plaintiff,

vs.

WELLS, FARGO & COMPANY, Defendant.

Defendant's Exceptions to Findings.

Defendant, within the time allowed by law, files this its exceptions to the Findings of fact heretofore made, signed and filed by the Judge and the Court herein, upon the ground that the said Findings are defective, and do not contain findings upon all the issues presented by the pleadings in said action, and particularly specify exceptions as follows, to-wit:

I.

That defendant excepts to the said findings above mentioned for the reason that there is no finding upon the issues presented by the answer of defendant herein, wherein it is alleged that the assessment sued upon herein was not made by the Assessor of the County of Humboldt, and that ther- is no law of the State of Nevada authorizing said assessment, and that said assessment is contrary to the Constitution of the United States in that it attempts to levy a tax upon the defendant for the right of engaging in interstate commerce, said allegations in said answer upon which there is an entire want of a finding of fact, being contained in paragraph II of said defendant's answer herein.

II.

That there is a want of finding upon the allegation contained in the answer and the issue presented by said answer, wherein it is alleged that the County Assessor of Humboldt County did not place any valuation whatever upon the property described in the complaint herein.

III.

That said findings are insufficient and defective for the reasons that there is want of a finding upon the allegations contained in the answer and the issues therein presented, to the effect that the State Board of Assessors made said assessment under and by virtue of the terms and provisions of Section 1 of "An Act to Amend an Act entitled 'An Act to provide for a more uniform valuation and assessment of property in this State,' approved March 16, 1901,"
188 approved March 13, 1903, and that the said law last above referred to is null and void and contrary to the Constitution of the State of Nevada, in that it attempts to delegate to said Board of Assessors the power or duty of determining or ascertaining what property shall be assessed by it, and allows them to determine in their discretion whether or *or* not the property mentioned in the complaint shall be assessed by them.

IV.

That said findings are defective in this, that there is an entire want of finding upon the allegations contained in the answer and the issues presented therein to the effect that the assessment and taxes described in the complaint were made, levied and imposed upon the right of defendant to conduct and transact its interstate business over and along the railroad tracks and railway lines and systems named in said complaint.

V.

That said findings are defective in this, that there is an entire want of findings upon the allegations of plaintiff's answer and the

issues presented therein, to the effect that the laws of the State of Nevada attempting to authorize the assessment alleged in the complaint by the State Board of Assessors made to distinction or discrimination between the interstate and intrastate business of the defendant.

VI.

That said finding- are defective in this, that there is an entire want of findings upon the allegations in defendant's answer and issues presented thereby, wherein, it is alleged that the said law does not provide or set forth any way or manner whereby it may be ascertained what portion of said tax is laid or imposed upon defendant's right to transact intrastate business, or what portion thereof is laid or imposed upon its rights to do interstate business.

VII.

That said findings are defective in this, that there is an entire want of findings upon the allegations contained in defendant's answer and the issues made therein to the effect that the assessment mentioned in the complaint was not made, nor were said taxes levied in accordance or with any reference to the actual business done by defendant over said railroad lines mentioned in the complaint, or in reference to the interstate business done thereover by said defendant.

VIII.

That said findings are defective in this, that there is an
189 entire want of finding upon the allegation contained in defendant's answer and in the amendment thereto, and the issues therein presented, to the effect that defendant had no notice whatsoever of the making or time of making of the assessment mentioned in the complaint, and that all the actions of the State Board of Assessors in connection with said assessment were without notice to defendant, and that this defendant had not nor was it given any opportunity to be heard at any time relative to the making of said assessment, or the levying of said tax.

XI.

That said findings are defective in this, that there is an entire want of finding upon all the matters and things contained and set forth in the further, separate and distinct defense of plaintiff's complaint herein contained, and in the amendment to defendant's answer on file herein.

XII.

That said findings are defective in this, that there is an entire want of any finding upon any of the separate defenses or affirmative allegations contained and set forth in defendant's answer herein,

and the amendment thereto, and that under the law said affirmative allegations contained in defendant's answer and the amendment thereto were either put in issue by the reply to said answer filed by said plaintiff, or were admitted by said plaintiff by plaintiff's failure to file a reply thereto, and that in either case, under the law, it was necessary that the court make findings upon the issues presented by the affirmative allegations of plaintiff's answer and amendment thereto.

XIII.

That said findings of fact are defective in this, that there is an entire want of finding upon the affirmative matters and things and defenses alleged and set forth in defendant's answer and the amendment thereto, and which were denied and put in issue by the plaintiff's reply thereto file- herein.

That said defendant demands that the findings heretofore made and filed herein by the court be corrected and modified by said court to the extent that the said court make herein findings of fact upon all the issues presented by the pleadings herein, and particularly that it make findings of fact upon the affirmative allegations contained in defendant's answer and amendment thereto.

L. A. GIBBONS,
Attorney for Defendant.

190 And that thereafter, on January 20th, 1914, after argument for that purpose, duly had, said court and the Judge thereof overruled all of said defendant's Exceptions to the Findings heretofore filed herein, and denied the defendant's request that said Findings be modified in accordance with the exceptions thereto, and refused to change the Findings theretofore made by said Court herein, to which said action and Order of Court in overruling said exceptions to said Findings, defendant then and there duly excepted.

That thereafter, and on the 20th day of January, 1914, the said motion for a new trial came on regularly to be heard and argued before said Court and the Hon. E. A. Ducker, Judge thereof, and then and there said defendant moved the said court to grant its Motion for a new trial upon the errors and grounds set forth in the memorandum aforesaid, and upon the grounds set forth in the notice of intention and upon said Motion for a New Trial used and referred to all the depositions and documentary evidence in the ca-e, the stenographer's notes and report of the testimony, and all the records of the Court in the above entitled cause, and thereupon said court took the same under advisement, and on said 20th day of January, 1914, denied said Motion for a New Trial, to which ruling of the court defendant then and there duly excepted.

And now, within the time allowed by law, this defendant presents its Statement of the Case and bill of Exceptions upon the order denying its Motion for a new trial and presents and asks that the same be allowed and settled as its Statement of the Case and Bill of

Exceptions upon said order denying its Motion for a New
191 Trial, and that the same be also settled and allowed as its Statement of the Case and Bill of Exceptions upon appeal from the judgment given, made and entered herein, and that its Memorandum of Errors and Exceptions upon said Motion for a new trial be allowed and settled as its Specifications of Error on appeal from the judgment, and also from the Order denying its Motion for a new trial.

L. A. GIBBONS,
Attorney for Defendant.

The foregoing Statement of the Case and Memorandum of Errors and Exceptions is allowed as a true and correct statement of the case and Bill of Exceptions upon the Order denying a Motion for a new trial herein, and a true and correct Statement of the Case and Bill of Exceptions upon appeal from the judgment herein, and that the said Memorandum of Errors and Exceptions be, and the same are hereby settled and allowed as Specifications of Error on appeal from the judgment and from the order denying its Motion for a New Trial.

EDW. A. DUCKER, *Judge.*

192 In the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt.

STATE OF NEVADA, Plaintiff,
vs.
WELLS, FARGO & COMPANY, a Corporation, Defendant.

Stipulation.

It is hereby stipulated that the foregoing Statement of the case and Memorandum of Errors and Exceptions may be allowed as a true and correct statement of the case and Bill of Exceptions upon the Order denying the Motion for a New Trial herein, and as a true and correct Statement of the Case and Bill of Exceptions upon appeal from the judgment herein, and that the said Memorandum of Errors and Bill of Exceptions be, and the same are hereby settled and allowed as Specifications of Error of appeal from the judgment and from the Order denying the defendant's motion for a new trial.

It is further stipulated that certified copies of all the original papers and pleadings in the case shall be and may be forwarded and sent to the Supreme Court of the State of Nevada as a portion of the transcript on appeal herein from both the order denying a new trial and from the final judgment, and that said certi-
193 fied copies of said papers and pleadings in this case and the foregoing statement shall be and constitute the transcript on appeal of the foregoing case, and that said case, and the appeal thereof, shall be heard and determined on the record so made, and that said record so made contains all of the evidence in

the case, and that the original exhibits, duly certified to by the Clerk, may be forwarded to the Supreme Court together with the record.

That said certified copies of said papers and pleadings and this statement and said original exhibits shall be and constitute the whole record on appeal in this case, and that this case shall be heard and determined on said record, and that upon the settlement of the Statement by the Judge, the Clerk of the Court shall bind together said certified copies of the papers and pleadings in this case, and this Statement, and after properly endorsing the same, and properly certifying the same, shall transmit the same to the Supreme Court of the State of Nevada, as constituting the whole record on appeal herein, and that said appeal shall be heard and determined on said record.

It is further stipulated that all the papers on file herein, and all the pleadings herein, were used and referred to on the hearing in the above entitled court on the Motion for a New Trial herein.

GEORGE B. THATCHER,
Attorney General;
J. A. CALLAHAN,
Attorneys for Plaintiff.
L. A. GIBBONS,
Attorney for Defendant.

194 In the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt.

No. 1815.

THE STATE OF NEVADA, Plaintiff,
vs.
WELLS, FARGO & COMPANY, a Corporation, Defendant.

STATE OF NEVADA,
County of Humboldt, ss:

I, J. W. Davey, County Clerk of said County and State, and ex-officio Clerk of the above entitled Court, do hereby certify, that the foregoing and annexed transcript consisting of 193 pages, numbered consecutively from 1 to 193, inclusive, constitutes and is the record on appeal, in the above entitled action, to the Supreme Court of the State of Nevada, from the order of said District Court denying defendant's motion for a new trial in said action, and from the judgment entered in said action (excepting the original exhibits offer-d and admitted in evidence); that page- 1 to 4 inc. is a full, true and correct copy of complaint in said action; that page 5 is a full, true and correct copy of the demurrer to the complaint; that page 6 is a full, true and correct copy of the order of said Court overruling defendant's demurrer to said complaint; that pages 7 to 13 inclusive is a full, true and correct copy of defendant's answer; that pages 14 to 18 inc. is a full, true and correct copy of

plaintiff's reply; that pages 19 to 23 inc. is a full, true and correct copy of defendant's amendment to its answer; that pages 24 to 26 inc. is a full, true and correct copy of plaintiff's reply to the
195 amendment to defendant's answer; that pages 27 to 30 inclusive is a full, true and correct copy of the findings of fact and conclusions of law, that pages 31 to 32 inclusive is a full, true and correct copy of the judgment entered in said cause; that page 33 is a full, true and correct copy of the certificate to the judgment roll on file in said cause; and that *that* pages 1 to 33 inclusive is a full true and correct copy of the judgment roll on file in said Court and cause; that pages 34 to 35 inc. is a full, true and correct copy of defendant's "Notice of intention to move for a new trial" on file in said cause; that page 36 is a full, true and correct copy of the order of said Court denying defendant's motion to correct and modify the findings; that page 37 is a full, true and correct copy of the order of said Court denying defendant's motion for a new trial in said cause; that page 38 is a correct and full copy of the order extending the time for defendant to file statement on appeal; that pages 39 to 40 inc. is a full, true and correct copy of the notice of appeal on file in said Court and Cause; that pages 41 to 42 inc. is a full, true and correct copy of the undertaking on file in said Court and Cause; that page 43 is a full, correct and true copy of the "admission of service of notice of appeal" on file in said cause; and that pages 44 to 193 inclusive, is the original statement of the cause and bill of exceptions, as settled and allowed by the Judge of said Court and filed in said Court and cause.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court this 24th day of March, A. D. 1914.

[SEAL.] J. W. DAVEY,
Clerk of Said Court.

196 In the Supreme Court of the State of Nevada.

No. 2119.

STATE OF NEVADA, Respondent,
vs.
WELLS, FARGO & COMPANY, a Corporation, Appellant.

L. A. Gibbons and Hoyt, Gibbons & French, for Appellant.
Geo. B. Thatcher, Attorney General, and J. A. Callahan, District Attorney, for Respondent.

Statement of the Case.

This is an action to recover taxes assessed against the appellant in the County of Humboldt, amounting to the sum of $694.53, which appellant permitted to go delinquent, together with penalties for non-payment and costs. From a judgment for the State and from an order denying a motion for a new trial, defendant appeals.

197 The complaint alleged that for the year 1910, in the county of Humboldt, the Assessor of said county did duly assess and put down on an assessment roll all the real and personal property in said county subject to taxation, which said assessment roll was thereafter submitted to and duly equalized by the board of equalization.

That the defendant, appellant herein, was then and there the owner of and there was duly assessed to it the following described property:

"That certain property belonging to said Wells, Fargo & Company, to-wit: The right to carry express and right to transact all other business, then and there, and commonly done and transacted by the said Wells, Fargo & Company over the railroad mileage operated by the Southern Pacific Company, a corporation, on that railroad track known as the Central Pacific Railroad passing through said Humboldt County, * * * (here follows description of line). The railroad mileage of the said Southern Pacific Company within the said County of Humboldt, on which the said Wells, Fargo & Company operates its said express business is one hundred and forty and *fourth* one-hundredths (140.14) miles, at a valuation for the said business of three hundred Dollars ($300.00) per mile."

The answer denied that the property described in the complaint was within the county of Humboldt, or that the same was subject to taxation; that the same was duly or at all assessed to said defendant, or that taxes were duly levied thereon; that the assessment was made by the county assessor of Humboldt County. The answer alleged that there is no law in the State of Nevada authorizing such assessment; that the same is contrary to the Constitution of the United States in that it is an attempt to levy a tax for the right to engage in interstate commerce.

198 For a further and separate answer and defense to the complaint, defendant alleged: that the county assessor did not make the assessment but that the same was made by the State Board of Assessors in January, 1910; that the law under which the said State Board of Assessors made the assessment is unconstitutional in that it is an attempt to delegate to said Board the power and duty of determining or ascertaining what property shall be assessed by it and is an attempted delegation of the taxing power; that the assessment and taxes described in the complaint were made, levied and imposed upon the right of defendant to conduct and transact its interstate business; that said law as construed makes no distinction between intra-state and inter-state business and imposes a tax on the right to conduct interstate business; that neither from the law nor the assessment can it be determined what portion of the tax assessed is imposed on the right to transact intrastate business as distinguished from interstate business; that the tax and assessment were made and levied and were so intended to be made and levied upon the right of defendant to do both intrastate and interstate business; that the law does not provide for any notice to be given to this defendant nor give it any opportunity to appear and

be heard at the time of making said assessment and defendant had no notice of the meeting of the board or of the assessment nor any opportunity to be heard.

For a further answer and defense, defendant alleged:

"That the total property owned by this defendant and situate in the State of Nevada and used by this defendant in the transaction of its business in said State as a going concern, exclusive of real property which is taxed as such, amounts to and is
199 the sum of $11,374.67, and that the total property so owned and used by this defendant and situate in the county of Humboldt, amounts to and is the sum of $383.98.

That if the said property so owned and used by this defendant and situate in the County of Humboldt was taxed at the same rate and in the same manner as other property situate in the County of Humboldt and owned by individuals and corporations other than this defendant, the tax so levied and assessed would amount to and be the sum of $6.32.

That the total tax assessed against this corporation in the State of Nevada by the State Board of Assessors in the month of January, 1910, and being the assessment referred to in the answer herein and being the assessment under which the taxes herein sued for were levied, amount to and exceed the sum of Ten Thousand Dollars ($10,000).

That at said meeting of the Board of Assessors said Board assessed this defendant and valued the property used by this defendant at the rate or sum of $300 for every mile of railroad over which this defendant transacted business, and apportioned said assessment or tax to the various counties of the State in accordance with the number of miles of such railroads so situated within said county, and that the tax herein sued for was not otherwise levied or assessed.

That said system of taxation so attempted to be enforced against this defendant is confiscatory and the property of this defendant is taken without due process of law in this that this defendant is assessed for taxes equalling in amount the property owned by it in the State of Nevada, whereas all other property in the State of Nevada is assessed at a much less rate, to wit, at the approximate rate of $2.25 for each hundred dollars of the assessed value of the property so owned by them, and as defendant is informed and believes other property in the State of Nevada is assessed at sixty per cent. of its actual value.

That the laws of the State of Nevada under which said taxes are purported to be assessed and levied, and particularly the law referred to in the first, separate and distinct defense herein are null and void in that they conflict with and violate the Constitution of the State of Nevada and particularly Section 20 thereof wherein it is provided that the Legislature shall enact no special or local laws for the
200 assessment and collection of taxes for State, County and Township purposes, and that said laws are further null and void in that they conflict with and violate the Constitution of the United States and particularly the Fourteenth Amendment to said Constitution wherein it is provided that no State shall deprive any person of

life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Plaintiff, in reply to defendant's answer, denied that the tax or assessment was made by any other person or body than the Assessor of Humboldt County; or that the tax or assessment is an attempt to levy a tax upon the right of defendant in engaging in interstate commerce, or is a tax on such commerce, or is a tax other than on the property of the defendant described in the complaint, or that defendant was given no notice or opportunity to be heard at the time of the action of the State Board of Assessors or of the Board of Equalization of Humboldt County, or that the total property owned by the defendant within the State of Nevada and used by the defendant in the transaction of its business in said State does not exceed the value of $11,373.67, and alleges the fact to be that the value of the property so owned and used by defendant in Humboldt County is the sum specified in the complaint; denies that the tax sued for was not otherwise levied or assessed than at the meeting of the State Board of Assessors and alleges the fact to be that the tax was levied and assessed as set forth in the complaint; denies that the said tax is confiscatory or is assessed for taxes equalling the amount of property owned by it in the State of Nevada, or that the tax so assessed is in any way different or not uniform with the taxes levied and
201 assessed against other property within the state.

At the trial and prior to taking testimony, the following colloquy occurred between counsel, relative to the pleadings:

Mr. Callahan: "It is not the intention of the plaintiff to deny that the State Board of Assessors, at their meeting of January, 1910, placed a valuation upon this property of three hundred dollars per mile; it is the intention of the plaintiff to admit that fact. And it is the intention of the plaintiff to admit that the Assessor of Humboldt County accepted that figure as the value of the property belonging to the defendant company.

Mr. Gibbons: In other words you confirmed, ratified and approved the action of the State Board of Assessors.

Mr. Callahan: No, sir, not exactly that. But that the County Assessor then after that action was taken by the State Board of Assessors, did every act necessary, for him to do in assessing the property. That will be our position. I simply wish to make this comment here upon a portion of this reply, as the reply here seems to deny that any other person excepting the County Assessor made the assessment. We will contend that the County Assessor did in fact make the assessment, but we are not going to deny that the State Board of Assessors that met in January did also place a valuation upon the Defendant's property.

Mr. Baker: * * * the position that the State takes in this case, is that the valuation upon the Wells Fargo property in the State was placed by the State Board of Assessors, and that the assessors of each county are bound by that valuation, and cannot change it. That it is the duty of the assessor to assess the property, that the assessor shall assess and enter its true number on the intrument,

carrying out and placing that valuation upon the property, and they have done so, but that the State Board of Assessors by placing a uniform valuation on the property, and in that sense it assessed the property.

Mr. Gibbons: In other words the State Board of Assessors placed the valuation upon the property, and under the law the County Assessors can not change that valuation, but that the County Assessor performs the ministerial act of making that assessment of fact, and entering it upon his books.

202 Mr. Callahan: And also by assessing it, in the same manner in which real property is assessed, and he goes through the same channel as he does in assessing other property."

Counsel for the State thereupon offered in evidence the delinquent tax list for Humboldt County for the year 1910, the property assessed, as described in such list and appearing on the assessment roll, being described as set forth in the complaint supra.

After calling the county assessor of Humboldt County and showing that he made the assessment, plaintiff rested.

Counsel for the defendant called as a witness Mr. J. F. Shaughnessy, member of the Board of Railroad Commissioners for the State of Nevada, who testified, among other things, to the following:

"That as such commissioner, during January of the year 1910, I furnished to the State Board of Assessors a statement relative to the business or taxes of Wells, Fargo & Co."

Thereupon, counsel for defendant offered in evidence a copy of the minutes of the meeting of the State Board of Assessors held at Carson City, January 10-15, 1910, which were admitted without objection. The statement, prepared by the witness and furnished by the Railroad Commission to the State Board of Assessors, as the same appears from the minutes, reads as follows:

203 "Wells, Fargo & Company.

For the Year Ending June 30, 1909.

Capitalization	$8,000,000.00
Dividend paid during the year, 10 per cent	800,000.00
Funded debt	None
Gross revenue from operation	$24,476,432.37
Express privileges (paid to railroads)	11,416,199.60
Operating revenue	$13,060,232.77
Operating expenses	9,664,933.85
Net express revenue	$3,395,298.92
Taxes (system as a whole)	132,820.04
	$3,262,478.88
Other income	1,401,900.46
Total income after paying taxes	$4,664,379.34
Dividends	800,000.00
Net income, carried to surplus	$3,864,379.34
Total surplus accumulated and on hand June 30, 1909	$24,455,417.51
The gross earnings of Wells, Fargo & Company for the State of Nevada, as reported to the Railroad Commission for the calendar year ending December 31, 1908, was	$850,000.00
Taxes paid to the State of Nevada, as reported to the Railroad Commission, was	$2,657.74

Comparing the Wells-Fargo Express Company as a revenue producer and a taxpayer, attention may be directed to the fact that the Tonopah and Goldfield Railroad, which is a Nevada corporation, with gross earnings for the past year of $910,000, paid towards the maintenance of the county and State governments in taxes $45,850.66, while by contrast it may be noted that the Wells-Fargo Express Company, with gross earnings of $850,000, only paid in taxes $2,657.74.

Further contrast in taxes may be shown by taking the Virginia and Truckee Railway with gross earnings of only $295,000, and it is noted that they paid in taxes for the past year $16,366, while the Wells Fargo Express Company, with gross earnings of $850,000, only paid in taxes $2,657.74.

It has been suggested by your Chairman that a per mile valuation should be assessed against this Company in order that the various counties and the State may receive their just proportion of taxes.

To find the valuation the 4 per cent of gross earnings basis may be used, or net earnings may be capitalized on a basis of 7 per cent. The

net earnings as reported to the commission are $291,084.85, and this amount is 7 per cent on $4,000,000 which could fairly be taken as the value of express company's property, real, personal, and intangible, franchises, etc., within the State of Nevada. Applying 40 per cent of this valuation the same as other property is assessed in Nevada, we have a valuation of $1,600,000 for the purpose of
204 taxation within this State. This company is operating within the State 1,890 miles of rail and stage line, and this would make an assessed valuation of $847 per mile.

Assuming that an average levy of 2 per cent was applied it would produce $16.94 per mile, or a total of approximately $32,000, in gross taxes to the State and counties.

If the 4 per cent of gross earnings basis is used it may be noted that this will produce $34,000 in taxes for State and counties.

The railroad express mileage of the Wells-Fargo Express Company in the State is approximately 1,700 miles and the stage-line mileage is 200 miles.

If it is found expendient to eliminate the stage mileage and place an assessment valuation of $500 per mile on the 1,700 miles of railroad express mileage, it will make an assessed valuation of the express company's taxable property, tangible and intangible, of $850,000, and assuming that an average levy of 2 per cent was applied it would produce a tax of $10 per mile, or $17,000 in gross taxes for the State and counties."

The minutes of the Board of Assessors relative to the question of the assessment of Wells, Fargo & Company is quite lengthy and only such extracts are here set out as will show clearly the action of the Board. It appears from the minutes that on the preceding day Judge Bartine, a member of the Railroad Commission, had read to the Board of Assessors the decision of the Supreme Court of the United States in Adams Express Company vs. Ohio, 166 U. S. 417, a copy of which decision is set out in full in the minutes of the meeting. We quote from the minutes the following:

"Judge Bartine: * * * Let me suggest further that in this Ohio case which I read the entire property of the express company was included by the Supreme Court to make it $16,000,000—$4,000,000 tangible and $12,000,000 consisting of the business they were doing. They were all lumped in together. So if you fix a valuation of $300 per mile, that would include all the utilities they use in the transaction of their business, and not tax them separately.

Mr. Owens: Mr. Chairman, I move that a valuation of $300 per mile be placed against Wells, Fargo & Company for all the railroad mileage they have in the State of Nevada.
205 Mr. McBurney: I second the motion.

Mr. Miles: Mr. Chairman, in this case, if it is levied on mileage only and not on horses, wagons, offices, office furniture, etc., the question is now as to whether or not the Assessor in including those items of property could seize and sell such property for the taxes, provided there was enough of that kind in the county.

Judge Bartine: I don't think there is any question about it at all as long as $300 per mile is placed as the valuation of their property. The Supreme Court has said that it is just to take aggregate mileage as the basis in order to find out what the rate of taxes should be. If you make the total tax $300 per mile in your county, that includes the offices, office furniture, safe and wagons and horses, etc., because they cannot do the business without these things, and when you levy the tax of $300 per mile that is the entire tax to be levied upon that company.

Mr. Owens: I will include that in my motion. I would like to know for the information of the board, after listening to the statement by Judge Bartine, if the various buildings are not included in that intangible property?

* * * * * * *

The Clerk called the roll, and the motion to place a valuation of $300 per mile on Wells, Fargo & Company was unanimously carried."

From the examination of the witness, Shaughnessy, we quote the following:

"Q. In other words, Mr. Shaughnessy, in order to arrive at the sum of $850,000.00, you took the aggregate of the sums of money received in the different stations in Nevada from intra-state business, and added to that the moneys received from inter-state business, on business coming from other states into the State of Nevada, and also added to that, and to those sums the moneys received from inter-state business forwarded from Nevada to other states and countries, and adding those three sums together you arrived at the sum of $850,000.00?

A. That is correct—yes, sir.

* * * * * * *

Q. How did you arrive at the sum of $291,000.00 odd thousand dollars mentioned on Page 117 of the Defendant's Exhibit '1'?

A. The statement as made on Page 117, the net earnings as reported to the Commission are $291,084.85. That adding and calculation there explains the method of arriving at that. We have on file in our office as reported by the Wells, Fargo & Company, and also by the Railroad Company, copies of all of the contracts of the division of the gross charge as express traffic, comprising the amount that the express company shall pay to the Railroad for privi-
206 lege for its transportation, for the transportation of the express business, and that charge will average for transportation known as the railroad privilege about fifty per cent of the express charges.

* * * * * * *

Q. And the basis of taxation upon the net profits of $291,000.00 odd dollars, or the gross profits of eight hundred and fifty thousand odd dollars, was not figured out upon the basis of the mileage in the State of Nevada, to the entire mileage?

A. No.

Q. Through which the Wells, Fargo and Company operates?

A. No, sir, it was not.

Q. And there was no attempt made by you, or by the Board of Assessors, to proportion the amount of business done within the State of Nevada, in the same proportion as the mileage within the State of Nevada bore to the entire mileage over which Wells, Fargo & Company conducts its business?

A. No.

Q. And the tax was not levied upon any such basis, nor was the assessment placed upon any such basis?

A. No, it was not.

* * * * * * *

Q. Then, as I understand your testimony the earnings of the Wells, Fargo & Company on business that was carried from the State of Nevada into other States, and from other states into the State of Navada was taken into consideration and made a part of the amount which was reported by you to be the earnings of the Wells, Fargo Company?

A. Yes, sir, there was an inclusion of the interstate earnings in that report.

* * * * * * *

Mr. Gibbons:

Q. Do you know of any other reason, than the reasons set forth in the minutes of the meeting of the State Board of Assessors in 1910, why this taxation was placed in the form of a mileage tax?

A. With the idea in view that it would more nearly reach the fair value of the property, and make a better distribution of it, and a better equalization than the previous system.

* * * * * * *

207 Q. Do you know what the gross intra-state earnings for the year 1910 were?

A. Yes, sir, I think I have that. The gross intra-state earnings in Nevada for the year 1910—that is the year and for the year ending June 30th, 1910—were $79,550.40.

Q. You do not know that the net intra-state earnings of Wells, Fargo & Company for the year 1910 were $6,225.61?

A. No, sir, I did not.

Q. Do you know what the aggregate tax so assessed by the State Board of Assessors for the year 1910 against Wells, Fargo & Company amounted to throughout the State, the State and County taxes?

A. Yes, sir, I have figured that. I think it would aggregate about eleven thousand dollars.

* * * * * * *

Q. Did you in making up this report to the State Board of Assessors in any way consider the franchise—to tax the franchise?

A. No, sir, we considered the property tangible and intangible."

The report of the Wells, Fargo Company to the Railroad Commission of the State of Nevada, ending June 30, 1908, referred to in the testimony of Mr. Shaughnessy, was offered in evidence by

the defendant. This report, in addition to the figures included in the statement furnished by the State Railroad Commission to the State Board of Assessors, shows the following with reference to the receipts of the Company from the business transacted within the State of Nevada:

Total receipt from intra-state business	$124,794.12
Total receipts from business originating at points outside the State and received at points within the State	583,485.97
Total receipts from business originating within the State and forwarded to points outside the state	141,905.69
Office expenses within the State	134,007.99

208 The report also shows that the receipts from operation for the year 1908, was $24,490,699.06 and the total net operating revenue was $3,115,025.66. The Company had an income from other sources of $1,138,891.59. The report shows a net corporate income from all sources to have been $4,180,615.74. The report also contains the following with reference to the operative mileage of the Company:

Total Mileage Operated—Entire System.

Steam Railroads	48,576.04	Miles
Electric "	1,180.11	"
Stages	932.12	"
Steamboat Lines	336.65	"
Ocean Steamers	14,449.00	"
Total	65,473.92	Miles

Relative to the report of the appellant corporation, for the year 1908, the following appears in the testimony of the witness, Shaughnessy:

"Q. Do you know of any reason why the earnings of the Wells Fargo Company for the year 1908 should have been taken as a basis for taxing them in the year 1910?

A. No, the only reason that it was taken was that that was the only data we had; there was no other data available at that time.

Q. Well, it would be a fair assumption would it not—that is in your opinion it was a fair assumption that their business would probably be about the same in 1910 as it would be and was in 1908?

A. Yes, sir, we figured that way.

Q. It would not vary much?

A. Yes, sir, we figured that it would run substantially the same.

Q. And you have no other data at hand?

A. That was the last official report we had before us.

209 E. E. McMichael, division superintendent of the defendant corporation, was called as witness for defendant and testified that he did not know of any officers or agents of the defendant

corporation being present at the meeting of the State Board of Assessors in January, 1910; that the defendant did not to his knowledge receive any notice that the State Board of Assessors would at that time place any valuation upon any of its property; that he had examined the records of the company to ascertain if knowledge of the notice had been received and that none could be found; that the value of the tangible personal property of the defendant company in the county of Humboldt was $383.98; that the total tangible property in the State of Nevada was $11,374.67.

Y. C. Lawsan, witness for the defendant, testified that he was at the time special representative of the Company in San Francisco and for some time prior thereto had been assistant auditor of the Company. The witness identified the following statement which was admitted in evidence:

"*Statement of Wells Fargo & Company's Operations within the State of Nevada for the Year* 1910.

Receipts from Express Operations—Intrastate	$76,342.18
Express Privileges—Railroads and Stages	34,810.74
Taxes and Licenses	2,543.26
Operating Expenses	32,762.57
(In pencil)	70,116.57
"	6,225.61

210 The witness testified that the value of the property of the company outside the State of Nevada used in the business of the Company, exclusive of real estate, was $4,251,939.16.

211 *Opinion.*

By the Court, NORCROSS, *C. J.* (after stating the case, supra):

Section 52 of the general revenue act (Rev. Laws, Sec. 3664) provides what defenses may be set up in an action for delinquent taxes. The section reads:

"The defendant may answer, which answer shall be verified:

* * * * * * *

Fifth. Fraud in the assessment, or in failing to comply with the provisions of this act; or that the assessment is out of proportion to and above the actual cash value of the property assessed; provided, however, that in such last mentioned case, where the defense is based upon the ground that the assessment is above the value of the property, the defense shall only be effectual as to the proportion of the tax based upon such excess of valuation, but in no such case shall an entire assessment be declared void."

We will assume that the defense interposed,—that the tax sought to be recovered in this case is in effect an attempt to impose a tax on interstate commerce and for that reason void, is a legitimate defense to the action.

Three main questions are presented for determination. First, Is the tax sought to be recovered in whole or in part a tax on interstate commerce? Second. If not a tax on interstate commerce but upon property of the appellant corporation within the state, was the assessment made in accordance with law? Third. If property subject to taxation has been regularly assessed, is the assessment out of proportion to and above the actual cash value of the property?

The law relative to taxation of express companies doing
212 both intra-state and inter-state business, is stated in 7 Cyc. 479, as follows:

"The state may tax the intra-state business of express companies, but a state may not tax the interstate business, either by a levy on the gross receipts of an express company from its interstate business, or by a tax worded to cover companies doing interstate business only; but may tax the property of an express company engaged in interstate business, and may fix the value of such property, either by reference to the whole capital or the gross earnings of the company, or by taxing its intangible property in proportion to mileage in the state compared with total mileage."

The case does not present a question of a license or excise tax and we shall not consider at length authorities dealing with laws where such taxes have been imposed or have been attempted to be imposed upon express companies. Suffice it to say that where such a tax has been held to be a tax on interstate commerce or the right to engage in interstate commerce, it has been held violative of the Constitution of the United States and void. See Ohio Tax Cases, 232 U. S. 576, 58 Law Ed. 737; State v. Northern Express Co., 141 Pac. (Wash.) 757.

It was held by the Supreme Court of the United States in Adams Express Company v. Ohio State Auditor, 165 U. S. 194, and same case on rehearing, 166 U. S. 185, (quoting from the syllabus, 166 U. S.) that:

"It is well settled that no State can interfere with interstate commerce through the imposition of a tax which is, in effect, a tax for the privilege of transacting such commerce; and also that such restriction upon the power of a State does not in the least degree abridge its right to tax at their full value all the instrumentalities used for such commerce.

The state statutes imposing taxes upon express companies which form the subject of these suits grant no privilege of doing an express business, and contemplate only the assessment and levy of
taxes upon the properties of the respective companies situated
213 within the respective States.

In the complex civilization of to-day a large portion of the wealth of a community consists of intangible property, and there is nothing in the nature of things or in the limitations of the Federal Constitution which restrains a State from taxing such intangible property at its real value.

Whenever separate articles of tangible property are joined together, not simply by a unity of ownership, but in a unity of use, there is not unfrequently developed a property, intangible though it may be,

which in value exceeds the aggregate of the value of the separate pieces of tangible property.

Whatever property is worth for the purposes of income and sale, it is worth for the purposes of taxation; and if the State comprehends all property in its scheme of taxation, then the good will of an organized and established industry must be recognized as a thing of value, and taxable.

The capital stock of a corporation and the shares in a joint stock company represent not only its tangible property, but also its intangible property, including therein all corporate franchises and all contracts, privileges and good will of the concern; and when, as in the case of the express company, the tangible property of the corporation is scattered through different States by means of which its business is transacted in each, the situs of this intangible property is not simply where its home office is, but is distributed wherever its tangible property is located and its work is done.

No fine spun theories about situs should interfere to enable these large corporations, whose business is of necessity carried on through many States, from bearing in each State such burden of taxation as a fair distribution of the actual value of their property among those States requires."

See, also, Adams Express Co. v. Kentucky, 166 U. S. 171; Wells, Fargo & Co. v. Johnson, 205 Fed. 60.

Since the decisions of the Supreme Court of the United States reported in the 165th and 166th U. S. Reports, cited supra, it has been the settled law in this country that the property of an express company doing both an interstate and intra-state business is in character both tangible and intangible; that such property
214 may be subject to assessment and taxes and that the situs of this intangible property is distributed wherever its tangible property is located and the work is done.

Counsel for appellant do not, as we understand, contend that a State may not under appropriate laws levy a tax upon the intangible property of an express company, but that the tax sued upon was not a property tax and, further, that the State of Nevada had enacted no laws by virtue of which such a tax could be imposed.

Article X of the State Constitution provides:

"The legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims * * *; and, also, excepting such property as may be exempted by law for municipal, educational, literary, scientific or other charitable purposes." (Rev. Laws, Sec. 352, as amended, Stats. 1913, p. 106.)

Section 5 of the general revenue Act, (Rev. Laws, sec. 3621) provides:

"All property of every kind and nature whatsoever, within this State, shall be subject to taxation except:" (here follows exceptions authorized by the provisions of the Constitution, supra).

Section 6 of the same Act (Rev. Laws, Sec. 3622) provides:

"The term 'real estate,' when used in this Act, shall be deemed and

taken to mean and include, and it is hereby declared to mean and include * * * and the same shall be listed under the head 'Real Estate.'

The term 'personal property,' whenever used in this Act, shall be deemed and taken to mean, and it is hereby declared to mean and include * * * all capital loaned, invested or employed
215 in trade, commerce or business whatsoever; the capital stock of all corporations * * * companies, associations, ferries, or individuals doing business or having an office within this state; * * * and all property of whatever kind or nature not included in the term 'real estate,' as said term is defined in this Act;" * * *.

It is clear from the foregoing excerpts, we think, that the constitution authorizes and the statute directs that all property of every kind, character and nature not specifically exempted, is subject to taxation. The fact that the legislature at the time of the adoption of the statute, supra, may not have indulged in the hope even that property of the appellant company, other than that visible to the naked eye, might be subject to taxation, nevertheless, it used language clearly evincing an intent to cover every possible contingency and to exclude from the burden of taxation only such property as was specifically exempted.

It is further contended, however, that the legislature has failed to adopt any rule or regulation governing the manner of determining the value of the intangible property of the appellant corporation and without such rule or regulation having been prescribed by the legislature, the revenue officers of the state are unauthorized to make an assessment. We think this objection sufficiently answered by the decision of this court in State v. Central Pacific R. R. Co., 10 Nev. 47, 63. This Court, speaking through Beatty, J., said:

"No principle of valuation of property for purposes of taxation is prescribed by the laws of this State. The statutes define the different species of property, and provide that every species shall be assessed at its 'actual cash value.' But as to the mode of ascertaining the cash value our law is silent. No subsidiary principles of valuation are laid down to guide the owner in making his statement in
216 those cases where he is required to specify values; and the assessor is left equally unrestricted in making his estimates. It follows that owners and assessors must be guided by those general principles which everywhere determine the valuation of property, independently of statutory rules."

See, also, Commercial E. C. & P. Co. v. Judson, 21 Wash. 49, 57 L. R. A. 78.

The property, tangible and intangible, of the appellant corporation being subject to taxation, was it duly assessed and taxed? By section 8 of the general revenue law (Rev. Laws, Sec. 3624) it is provided:

"Between the date of the levy of taxes and the first Monday of September in each year, the county assessor, * * * shall ascertain, by diligent inquiry and examination, all property in his county, real or personal, subject to taxation, and also the names of all person-, corporations, associations, companies, or firms, owning the

same; and he shall then determine the true cash value of all such property, and he shall then list and assess the same to the person, firm, corporation, association, or company, owing (owning) it. For the purpose of enabling the assessor to make such assessments, he shall demand from each person and firm, and from the president, cashier, treasurer, or managing agent of each corporation, association, or company, including all banking institutions, associations, or firms within his county, a statement under oath or affirmation of all the real estate or personal property within the county, owned or claimed by such persons, firm, corporation, association, or company." * * *

Section 1 of an Act entitled: "An Act to provide for a more uniform valuation and assessment of property in this state," approved March 16, 1901, (Rev. Laws, Sec. 3797) provides:

"The county assessors of the several counties of this state shall meet for a period not exceeding ten days in the office of the governor at Carson City, Nevada, on the second Monday in January
217 of each year, and shall at such meetings establish a valuation through the state of all railroads and rolling stock of such railroads, of all telegraph and telephone lines, of all electric light and power lines, of all cattle and sheep, and upon all other kinds of property which in the judgment of said assessors can be valued and assessed more uniformly by said assessors, acting collectively, than by the several county assessors acting separately; provided, that in fixing such valuation the location and situation of such property shall be considered; and, provided further, that nothing herein shall be so construed as to impair the right of the board of equalization of any county to equalize taxes on all property, the valuation of which has not been fixed at the annual meeting of the county assessors as provided in this section; but the said county board of equalization shall not have the power to equalize any property upon which a valuation has been placed by the said board of county assessors; provided, any taxpayer under the provisions of this act shall not be deprived of any remedy or redress in a court of law relating to the payment of taxes."

Section 4 of said last mentioned Act (Rev. Laws, Sec. 3800) provides:

"The valuation fixed at such annual meetings shall be the actual cash value of all such property as may be designated, as now provided by law, taking into consideration the locality of such property, and the assessors of the several counties shall assess and enter upon the assessment rolls of their respective counties all such property at the valuation designated by such meeting of county assessors, and shall fix the value and assess all property not so valued at said meeting in the manner now provided by law."

It is contended that the provisions of the statute, Rev. Laws, Sec. 3797, supra, empowering the state board of assessors to "establish a valuation * * * upon all other kinds of property, which in the judgment of said assessors can be valued and assessed more uniformly by said assessors, acting collectively, than by the several county as-

sessors acting separately," is a void attempt to delegate legislative power. Counsel for appellant in their brief say:

218 "The legislature cannot leave the question to the state board of assessors whether or not express companies shall be taxed or shall escape taxation, yet this is what the legislature has done, if the contention of plaintiff is correct."

We do not understand plaintiff to make any such contention, but it is clear that the statute in question does not leave to the discretion of the state board of assessors whether the property of express companies, or any other property subject to taxation, shall or shall not be taxed. If this were the statute it would be void, but the revenue statutes require all property, except that specifically exempted, to be assessed either by the state board of assessors or by the county assessors. Cooley in his work on taxation says:

"We conceive that the legislature must, in every instance, prescribe the rule under which taxation may be laid; it must originate the authority under which, after due proceedings, the tax gatherer demands the contribution; but it need not prescribe all the details of action, or even fix with precision the sum to be raised or all the particulars of its expenditure. If the rule is prescribed which, in its administration, works out the result, that is sufficient; but to refer the making of the rule to another authority, would be in excess of legislative power. An illustration or two may possibly sufficiently explain the principle. The legislature, with the utmost propriety, may provide for a court of claims or a state board of audit, whose adjudications against the state shall be final upon it; and may direct that the amounts awarded shall go into the general levy for the year. Here is a rule to be properly worked out by a proper agency. A like provision for the adjustment of claims against counties, cities and townships may also be made. A fund for contingent expenses may be put at the disposal of the executive or of other state officers, to be used for public purposes not previously enumerated in detail by the legislature. But to leave to a court of claims or any state officer or board the power to determine whether a tax should be laid for the current year, or at what rate, or upon what property, or how it should be collected, and whether lands should be sold

219 or forfeited for its satisfaction,—all this prescribes no rule, and originates no authority; it merely attempts to empower some other tribunal to prescribe a rule and set in motion the tax machinery. And this is clearly incompetent. The legislature must make the law, but it may prescribe its own regulations regarding the ministerial agents that are to execute it."

The valuation of certain property must be determined by the state board and the valuation of all property not so determined by it must be fixed by the several county assessors acting separately. The only discretion reposed in the state board is to determine whether other kinds of property than those enumerated can be valued and assessed more uniformly by the board than by the county assessors acting separately. The purpose of the assessment whether made by the board or the individual assessors is to determine the cash value of the property, and this purpose is declared by the legislature and

cannot be delegated. As said by this Court in Sawyer v. Dooley, 21 Nev. 397:

"All property, whether assessed by the board or by the county assessors, must be assessed at its actual cash value, and there is no reason why this value may not be as accurately determined by several different men and boards as by one. In fact, it might sometimes be done much better, as one man, although an expert upon the value of horses and farms, might know but little of railroads or other property. If not, this would be an equally good argument against the system of separate county assessors and boards, and require all the property in the state to be assessed and equalized by one man or one board. All that is required is a uniformity of taxes, and not a uniformity in the manner of assessing or collecting them."

Ruling Case Law says:

"The difficulty in determining what powers may or may not be delegated seems in part to be due to a confusion between strictly legislative powers coming within the constitutional limitation, and other powers, which, although at times exercised by the legis-
220 lature are not strictly legislative and may be used in proper cases by persons belonging to the other departments of government; hence, it is said that the rule that legislative powers cannot be delegated must be understood as being applicable only to cases where the discretion is essentially legislative." * * * 6 R. C. L., 165.

Power is delegated to the state board of assessors to determine whether certain property, other than the classes specifically mentioned, may be assessed more uniformly by the board than by the several assessors acting independently. The purpose of this delegated power, as expressed by the statute, is to carry out the mandate of the constitution and statutes for uniformity and equality in assessment and taxation of all property. The board is given no power to discriminate in favor or against any class of property. It may in certain cases take from the county assessor the power to determine the valuation to be placed on a certain class of property in which case the assessor is required to enter the property on the tax roll at the valuation fixed by the state board, but as before stated, the statutory requirement as to cash valuation applies whether the valuation is made by the board or the individual assessor. While the question is not entirely free from doubt, it is not clear that there is in this statute a delegation of strictly legislative power, and under the well settled rule doubts must be resolved in favor of the statute.

Assuming that no notice was given appellant that the state board of assessors would assess its property, we are of the opinion that the assessment would not for that reason be invalid. The statute makes no provision for such notice and where notice is not required by statute none need be given. 37 Cyc. 1019, 1045.

221 . Are the taxes involved in the action within the prohibition of a tax on interstate commerce? If it is a tax on the property of the appellant within the state, that is sought to be recovered, then the tax is not invalid.

The language used by the assessor in the description appearing

upon the assessment roll, it must be conceded, furnishes room for controversy as to whether property subject to taxation has in fact been assessed to appellant.

Counsel for appellant in their claim that the language used in the description by the assessor rendered the assessment void, suggest that if the description had been,—"The property of Wells, Fargo & Company, situated in Humboldt County, as united in ownership and use for express business,"—it would have been in accordance with what the Supreme Court of the United States in the 166 U. S., supra, held was property subject to taxation. It must be admitted that the suggested description would have been better and, doubtless, would have obviated the serious question here presented. It does not follow, however, that because the most apt language was not uesd, the description is so faulty as to render the assessment void.

Under the provisions of section 8 of the general revenue law, Rev. Laws, Sec. 3624, supra, it was the duty of the assessor to demand of Appeliant and of Appellant to furnish a statement of its property subject to assessment in Humboldt County. In the absence of showing to the contrary, it will be presumed that the officer performed his duty. It does not appear that the appellant furnished any other or different description of its property. It had property subject to taxation in Humboldt County as defined in the 166 U. S., supra. It should have furnished a statement of this property. It
222 is denied in the reply to defendant's answer, that the assessor intended to or did levy a tax on appellant's right to engage in interstate commerce.

From the testimony of the Assessor of Humboldt County given at the trial we quote the following:

"Q. You said you are familiar with the property; all you know about it is what those words convey to you, is it not, Mr. Leonard?

A. Yes, sir.

Q. You never saw the property?

A. As much as anybody can see it.

Q. Well, did you ever see it?

A. I have seen part of the business.

Q. Yes, but that is about all any one can know about the property, the description that is contained therein?

A. Yes, sir.

Q. You did not see that property in the county?

A. It is intangible."

The court refused to make a finding or to amend the findings upon the request of counsel for defendant

"to the effect that the assessment and taxes described in the complaint were made, levied and imposed upon the right of defendant to conduct and transact its interstate business over and along the railroad track and railway lines and systems named in said complaint."

If we look to the action of the state board of assessors, we find that it had under consideration the assessment and valuation of appellant's property as held subject to taxation by the decision of the

Supreme Court of the United States in the 166 U. S., supra. The motion made and carried by the state board fixing a mileage valuation on the property of appellant was not very specific, so far as description of the property to be assessed was concerned, but the purpose of the board to assess property subject to assessment is quite manifest from its whole proceedings. It is, however, alleged in defendant's answer, quoted supra, "That * * * said
223 Board assessed this defendant and valued the property used by this defendant at the rate" * * *.

Cyc., under the heading, "Necessity and Sufficiency of Description," says:

"It is essential to the validity of the assessment list and of all proceedings founded on it that it should contain a description of all the property intended to be assessed; but minute particularity is not required, any description being sufficient which identifies the particular property so clearly that the owner cannot be misled. And a detailed description will be more easily dispensed with where the assessor is unable to ascertain the exact nature of the property. It is not necessary to enumerate every item of personal property, but it has been held that the different classes mentioned in the statute should be separately listed, although by the force of some statutes, it is now held sufficient to list all such property under the general description of 'personal property' and an assessment even under such a heading as 'miscellany' may be considered sufficient if the owner himself knows exactly what is meant." (37 Cyc. p. 1051.)

A case presenting a question analogous to the one under consideration came before the Supreme Court of California in 1911, Western Union Telegraph Co. v. Los Angeles County, 116 Pac. 564. The description of the property assessed in the case last mentioned, as stated in the opinion, read:

" 'Right to occupy the streets of the City of Los Angeles,' without other words of description or identification, the valuation thereof for purposes of assessment being placed at $50,000."

From the opinion of the court in that case by Angellotti, J., we further quote the following:

"By Western Union Tel. Co. v. Hopkins, L. A. No. 2,445, 116 Pac. 557, it is decided that plaintiff had at the time of this assessment a right in the nature of a franchise in the streets of the city of Los Angeles, viz., the right to the exclusive occupation without compensation of portions thereof used for its poles and wires and underground conduit, derived from and held under section 536 of the Civil Code, which constituted no part of its federal franchise, and
224 which was taxable for state and county purposes in the county of Los Angeles. If the assessment in the case at bar was exclusively of that right, it follows from the views announced in that case that the tax was valid. The only difficulty in this case arises from the wording of the description in the assessment.

It is admitted that plaintiff has certain rights in regard to the streets of the city of Los Angeles by virtue of its federal franchise acquired under Act, July 24, 1866, c. 230, 14 Stat. 221, and, of course, that franchise cannot be assessed by state, county, or munic-

ipality. It is claimed by plaintiff that its federal franchise is included in this assessment, and, if so included, that the entire assessment must fall as illegal, because the values of the two rights, federal and state, are so blended together that the unlawful part cannot be separated from the lawful part. If the first of these claims is well founded, the second necessarily follows. California v. G. P. R. R. Co., 127 U. S. 1, 29, 45, 8 Sup. Ct. 1073, 32, L. Ed. 150. Plaintiff alleged in its complaint that the assessment was upon its federal franchise. By its answer defendant fully denied the allegations in this behalf, denying that the assessment was intended to or did impose any burden or tax on any federal franchise, and alleging that the only franchise or right assessed was that derived by plaintiff from the state of California, under section 536 of the Civil Code. No evidence was introduced by either side on this issue, the case being submitted for decision upon the pleadings and upon a stipulation as to the facts, which stipulation is silent upon this proposition. There were no findings of fact.

We are satisfied that it must here be held that the assessment was limited to rights in the streets of Los Angeles derived by plaintiff from the state of California, and not covered by the federal franchise, and that the description was not so imperfect as to invalidate the assessment." * * *

It is our conclusion that the description, in the light of the record, is not so imperfect as to invalidate the assessment.

Is an assessment of appellant's personal property, tangible and intangible inclusive, upon a mileage basis of $300 per mile of the lines of railroad over which appellant conducts its business in this
225 state excessive? The burden of establishing excessive valuation was upon the defendant. (Rev. Laws, Sec. 3664, supra.) Assuming that the net operative earnings of appellant was substantially the same in 1910 as in 1908, which appears to have been conceded, we have the sum of $3,115,026.46 as the net operative revenue derived from the tangible and intangible property combined in its business. This is a ten per cent net earning on property of the value of over $31,000,000. Taking the entire operative mileage of the company, 65,474 miles, including nearly 15,000 miles of steamship lines, and we have a net earning of approximately $48.00 per mile. Even if we exclude from a capitalization of the net earnings of the company upon a ten per cent basis the value of all the property of the company situated outside the state of Nevada and used in its operative business, to-wit, $4,251,939.16, the figures would still show a net earning of over $40.00 per mile for the entire system, or a valuation of $400.00 per mile for the system as a whole.

In taking ten per cent as a basis of capitalization of the net earnings of the company, we do not wish to be understood that so high a rate would be entirely just to the state, but such rate is used for the purpose of showing that the valuation placed upon appellant's property was well within a capitalization determined from an assumed high rate of income.

Whether the system of determining the valuation of appellant's property, applied by the state board of assessors, was correct or not,

it does not appear that it operated to impose an excessive valuation. The fact that erroneous methods may in good faith have been used to determine valuations, is immaterial, we think, if an ex-
226 cessive valuation did not result therefrom.

In taking the total operative mileage of the company in making the above estimate of value, we do not wish to be understood as holding that the ocean steamship mileage should be included. For the present we express no opinion as to whether that mileage should be considered. Assuming that it ought not to be included and assuming eight per cent to be a fair rate of interest upon which to estimate the value of appellant's property subject to assessment upon a mileage basis, we would have resulting a valuation in excess of $750.00 per operative mile.

Appellant contends that the net income of the company from its intrastate business in Nevada for the year 1910, was only $6,225.61, and if any basis of capitalization is taken to determine the value of property within the state it should be on this sum. This calculation leaves out entirely, as a means of determining the value of the tangible and intangible property of the company within the state, net receipts from interstate business, and does not take into consideration at all the net operative receipts of the entire system, and is not a fair means of determining valuation as pointed out by the Supreme Court of the United States in the 165th and 166th U. S. Reports, supra.

Judgment affirmed.

NORCROSS, *C. J.*

We concur:
McCARRAN, *J.*
COLEMAN, *J.*

Filed July 22, 1915. H. R. Mighels, Clerk.

227 In the Supreme Court of the State of Nevada.

No. 2119.

STATE OF NEVADA, Respondent,
vs.
WELLS, FARGO & COMPANY, a Corporation, Appellant.

Appealed from the Sixth Judicial District Court in and for the County of Humboldt. Edward A. Ducker, District Judge.

Judgment.

The above entitled cause came on regularly to be heard on the thirteenth day of February, 1915, it being a regular day of the January term of Court of 1915.

George B. Thatcher, Attorney General of the State of Nevada and J. A. Callahan, District Attorney of Humboldt County, State of Nevada, Counsel for the Respondent, and L. A. Gibbons, and Henry M. Hoyt, Esq., of Counsel for the Appellant, being present

in Court, were each duly heard in oral argument in the statement of the case upon its merits in behalf of their respective parties, whereupon this cause was submitted to the Court for their consideration and decision.

Now on this day all and singular the law and the premises having been seen, heard and duly considered, and the Court being fully advised in the law, now files with the Clerk of this Court its decision in writing by Norcross, C. J., concurred in by McCarran, J., and Coleman, J., to the effect:

That the judgment of the Sixth Judicial District Court, in and for the County of Humboldt, State of Nevada, should be affirmed.

Whereupon, it is now ordered, adjudged and decreed that the judgment of the Sixth Judicial District Court, in and for the County of Humboldt, State of Nevada, is and the same is hereby affirmed in the above entitled action.

228 Judgment entered this 22nd day of July, A. D. 1915.

H. R. MIGHELS,
Clerk Supreme Court, State of Nevada.

229 In the Supreme Court of the State of Nevada.

No. 2119.

STATE OF NEVADA, Respondent,
vs.
WELLS, FARGO & COMPANY, a Corporation, Appellant.

Order Denying on Petition for Rehearing.

A decision having been heretofore rendered in the above entitled cause on the 22nd day of July, 1915, by the Court, when counsel for the Appellant within the time allowed by law filed a petition for re-hearing, with Respondent replying thereto.

The Court having the same under consideration, when on this day all and singular, the law and the premises having been fully considered, it was ordered from the Bench:

That the petition for rehearing in the above entitled cause is and the same is hereby denied.

Dated this 28th day of September, A. D. 1915.

Attest:

H. R. MIGHELS,
Clerk of the Supreme Court
of the State of Nevada.

230 In the Supreme Court of the State of Nevada.

WELLS FARGO & COMPANY, a Corporation, Plaintiff in Error,
vs.
THE STATE OF NEVADA, Defendant in Error.

Petition for Writ of Error.

To the Hoonrable Frank H. Norcross, Chief Justice of the Supreme Court of the State of Nevada:

Comes now Wells, Fargo & Company, a corporation, plaintiff in error herein named, and respectfully represents and shows this Honorable Court that on the 22nd day of July, 1915, judgment in the above entitled cause was entered by this Court against the above named plaintiff in error, Wells Fargo & Company, a corporation, and thereafter a Petition for Re-hearing was filed, presented and considered, and on the 28th day of September, 1915, denied by thsi Court. Whereupon said judgment became final.

That said Wells, Fargo & Company, a corporation, was, and is aggrieved in that in said judgment and proceedings had prior thereto in this case, certain errors were committed to its prejudice.

231 That this action was brought by the defendant in error against the plaintiff in error to recover certain taxes sought to be imposed and in form levied against certain property belonging to Wells, Fargo & Company, a corporation, plaintiff in error, said property being designated in the said so-called levy and assessment as the right to carry express and right to transact all other business commonly done and transacted by Wells, Fargo & Company over the railroad operated by the Southern Pacific Company, a railroad corporation within the County of Humboldt, State of Nevada, on which railroad the said Wells, Fargo & Company operates its express business.

That the said railroad mileage of the Southern Pacific Company in Humboldt County, over which said Wells, Fargo & Company operated its express business within said county was, and is 140.14 miles, and the rate at which said property of said Wells, Fargo & Company, a corporation, as above described was assessed and taxed was, and is the sum of $300.00 for each of said 140.14 miles as aforesaid.

That the Southern Pacific Company was, and is at all times, both prior and since the so-called levy and assessment of said taxes, *and* inter-state railroad, carrying freight and money through the State of Nevada into other States eastward and westward of said State of Nevada.

That it appears from the record in this action, *a* and is a fact, that at the time of the so-called levy and assessment of said taxes, the total tangible property owned by Wells, Fargo & Company and situate within the State of Nevada, was and is valued at the sum of $21,766.51, and no more.

That the assessment and tax in form levied and made by

232 said State of Nevada, against Wells, Fargo & Company, a corporation, upon its property hereinbefore described, and upon no other property, was a part of a like assessment of $300.00 per mile levied against said Wells, Fargo & Company for each mile of railroad mileage over which it transacted express business within the State of Nevada, and that the total amount of taxes payable to said State of Nevada and the different counties thereof under said assessment, if said assessment is held to be valid, would be and is the sum of not more than $11,000.00.

That plaintiff in error herein answered said action, and among other defenses, set up and pleaded as a defense to said action—

First, that the laws of the State of Nevada under which said assessment and tax against Wells, Fargo & Company was purported to be levied did not provide that any notice be given to Plaintiff in error of said levy or assessment, nor did it provide that any opportunity be given to it to appear or be heard at the time of making said alleged assessment, and in fact said Wells, Fargo & Company, had no notice of said so-called levy and assessment, and did not appear, nor was it heard at the time of the making of said levy and assessment, and that for that reason the said law of the State of Nevada authorizing said assessment and said alleged assessment and tax were null and void, and contrary to the Constitution of the United States, and particularly the 14th amendment thereof, in that it deprived Wells, Fargo & Company of its property without due or any process of law, and denies to it the equal protection of the law.

233 Said Plaintiff in error further set up in said answer that if the property owned and used by this Plaintiff in Error in said County of Humboldt was taxed at the same rate, and in the manner as other property situated therein and owned by individuals and corporations other than the plaintiff in error, the tax so levied and assessed against it would amount to and be the sum of $632.00, and that said tax so assessed and levied against this plaintiff in error was confiscatory and discriminatory against this plaintiff in error, and deprive- the plaintiff in error of its property without process of law, and denied plaintiff in error the equal protection of the law, all contrary to, and in conflict with the 14th amendment of the Constitution of the United States.

That said Plaintiff in Error further set up in its answer, as a defense thereto, that the property attempted to be taxed and assessed by said State of Nevada was the right of said plaintiff in error to conduct and carry on inter-state commerce, and that the tax so levied and assessed against plaintiff in error was levied and assessed upon its right and privilege to carry on and conduct inter-state commerce, and furthermore levied and assessed upon the earnings derived by said Wells, Fargo & Company through its conduct of inter-state commerce and not otherwise, all of which was and is in conflict with the Constitution of the United States of America, and particularly that provision therein which provides that the Congress of the United States has the exclusive power and authority to regu-

late commerce with foreign nations and among the several states, and with Indian tribes.

This Plaintiff in Error further sets up in its Answer as
234 a defense to said action that the laws of the State of Nevada provided no method by which said tax could be levied upon the said property of said Plaintiff in Error, nor did it provide any method or means whereby the receipts of this Plaintiff in Error from its intra-state business could be segregated and seperated from its receipts from its inter-state business, nor did the laws of the State of Nevada prescribe any way, or manner or method whereby said State could ascertain what portion of said so-called tax or assessment was levied upon the right of said plaintiff in error to transact intra-state business.

That the Supreme Court of the State of Nevada is the highest court of law or equity of the said State of Nevada in which a decision in this action could be had.

In said action there was drawn into question a right claimed by the plaintiff in error under the Constitution of the United States of America, as hereinbefore set forth, and the decision of the Supreme Court of the State of Nevada was and is against said right so claimed by plaintiff in error under and pursuant to the provision of the Constitution of the United States, and in said action the rights, privileges and immunities were claimed by said Plaintiff in Error under the Constitution and Statutes of the United States, and under the authority exercised under the United States, and the decision of the said Supreme Court of the State of Nevada was against the rights, privileges and immunities as specifically set up and claimed under said Constitution, statutes and authority by this Plaintiff in Error, all of which will more fully *fully* appear in detail from Assignments of Error filed herein.

235 Wherefore, said Wells, Fargo & Company, a corporation, Plaintiff in Error, prays that a Writ of Error may issue to the Supreme Court of the State of Nevada for a correction of the errors compa*l*ined of, and that a duly authenticated copy of the records, proceedings and papers herein may be sent to the United States Supreme Court.

Dated, November 8, 1915.

HENRY M. HOYT,
L. A. GIBBONS,
L. N. FRENCH,
Attorneys for Plaintiff in Error.

Filed—November 8, 1915. H. R. Mighels, Clerk Supreme Court State of Nevada.

236 In the Supreme Court of the State of Nevada.

WELLS, FARGO & COMPANY, a Corporation, Plaintiff in Error,
vs.
THE STATE OF NEVADA, Defendant in Error.

Allowance of Writ of Error.

Wells, Fargo & Company, a corporation, plaintiff in Error above named, having on this 8th day of November, 1915, filed and presented to this Court its petition praying for the allowance of a Writ of Error intended to be urged by it, and praying further that a duly authenticated transcript of the records, proceedings and papers upon which the judgment herein was rendered may be sent to the Supreme Court of the United States, that such other and further proceedings may be had in the premises as may be just and proper, and upon consideration of said petition and said cause, this Court desiring to give petitioner an opportunity to test in the Supreme Court of the United States the questions therein presented;

It is ordered by this court that a Writ of Error be allowed as prayed for; provided, however, that said Wells, Fargo & Company, a corporation, Plaintiff in Error herein, give a bond according
237 to law in the sum of $3,000.00, which said bond shall operate as a supersedeas bond.

In testimony whereof witness my hand this 8th day of November, 1915.

F. H. NORCROSS,
Chief Justice of the Supreme Court of the State of Nevada.

Filed November 8, 1915. H. R. Mighels, Clerk.

238 In the Supreme Court of the United States.

WELLS, FARGO & COMPANY, a Corporation, Plaintiff in Error,
vs.
STATE OF NEVADA, Defendant in Error.

Assignments of Error.

Comes now the plaintiff in error in the above entitled cause and avers and shows that in the record and proceedings in said cause the Supreme Court of the State of Nevada erred to the grievous injury and wrong of the Plaintiff in Error herein and to the prejudice and against the rights of the plaintiff in error as follows:

1. The Court erred in sustaining an assessment and tax which was in terms a tax upon the right to carry express and transact express business, inasmuch as such business is admittedly inter-state commerce (except as to a negligible proportion of intra-state business)

and as such is, by the Constitution and Laws of the United States, exempt from State taxation, control and regulation.

2. The Court erred in sustaining any assessment made by the State Board of Assessors, because there is no State Law which authorizes assessment of this class of property by the State Board, and any law purporting so to do is an unconstitutional delegation of Legislative power.

239 3. The Court erred in sustaining the assessment and tax in the face of the proof in the trial court and in the record that the assessment was without notice to the tax-payer and without opportunity to be heard and to resist, and thereby deprived the Plaintiff in Error of its property without due process of law in contravention of the 14th amendment of the Constitution of the United States.

4. The Court erred in not confining the assessment of Plaintiff in Error to the tangible property owned by it, there being no law of the State providing for the assessment of the intangible property here sought to be reached.

5. The Court erred in sustaining the tax so far as it is a tax upon inter-state commerce in any character and to any amount or in any proportion, and thus deprived Plaintiff in Error of its property without due process of law in contravention of the 14th Amendment of the Constitution of the United States.

6. The Court erred in sustaining the assessment and tax for the reason that under the evidence the same was an assessment and tax upon the earnings of the owner, namely, the Plaintiff in Error, and not upon the property of the Plaintiff in Error, and at the time of the levy of the tax there was no provision of the Constitution of the United States permitting a tax upon the income of said Plaintiff in Error, and the sustaining of said tax was and is a deprivation of property of Plaintiff in Error without due process of law in contravention of the 14th Amendment of the Constitution of the United States.

7. The Court erred in sustaining the action of the Lower Court in failing to find upon the following issues:

240 (*a*) That the assessment was not made by the County Assessor of Humboldt County.

(*b*) That the assessment is contrary to the commerce clause of, and the 14th amendment to, the federal constitution.

(*c*) That there is no law which provides for the ascertainment and segregation in assessment of values arising from intrastate and interstate business.

(*d*) That there was no valuation made upon the basis of knowledge or information of the business done upon which to base a calculation.

(*e*) That defendant had no notice or knowledge of making or time of making the assessment by the Board, nor any opportunity to be heard.

8. That the Opinion and Decision of the Court is against law.

Wherefore, the Plaintiff in Error prays that the judgment afore-

said of the Supreme Court of the State of Nevada be reversed, annulled and set aside.

HENRY M. HOYT,
L. A. GIBBONS,
L. N. FRENCH,
Attorneys for Plaintiff in Error.

Filed Nov. 8, 1915. H. R. Mighels, Clerk.

241 In the Supreme Court of the State of Nevada.

WELLS, FARGO & COMPANY, a Corporation, Plaintiff in Error,
vs.
THE STATE OF NEVADA, Defendant in Error.

Bond on Writ of Error.

Know all men by these presents: That Wells, Fargo & Company, a corporation organized and existing under and by virtue of the Laws of the State of Colorado, as principal, and the United States Fidelity and Guarantee Company, a corporation organized and existing under and by virtue of the laws of the State of Maryland, as surety, *and* held and firmly bound unto the above named State of Nevada in the sum of Three Thousand ($3,000.00) Dollars, gold coin of the United States, to be paid to it, the payment of which well and truly to be made the said principal and said surety bind themselves and each of their successors and assigns jointly and severally firmly by these presents.

Sealed with our seals and dated this 5th day of November, 1915.

Whereas, in the above entitled action the Supreme Court of the State of Nevada rendered its judgment on the 22nd day of July, 1915, affirming the judgment of the Sixth Judicial District Court of the State of Nevada, in and for the County of Humboldt, and
242 on the 28th day of September, 1915 denied a Petition for Rehearing filed herein by said Wells, Fargo & Company, a corporation, and the said Wells, Fargo & Company a corporation, Plaintiff in Error, seeks to prosecute its Writ of Error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Nevada.

Now, therefore, the condition of this obligation is that if the above named Plaintiff in Error, Wells, Fargo & Company, a corporation, shall prosecute its Writ of Error to effect and answer all damages and costs and pay the amount of said judgment if it fails to make its plea good, then the above obligation to be void, otherwise to remain in full force and effect.

WELLS, FARGO & COMPANY, *a Corporation,*
By A. CHRISTENSON,
Its General Manager and Vice President.
[SEAL.] THE UNITED STATES FIDELITY & GUARANTEE COMPANY,
By C. R. CARTER, *Its Attorney in Fact,*
By A. E. CHENEY, *Its Attorney in Fact.*

Approved this 30th day of November, 1915.

F. H. NORCROSS,
Chief Justice Supreme Court of the State of Nevada.

Filed November 30, 1915. H. R. Mighels, Clerk Supreme Court State of Nevada.

243 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Nevada, Greeting:

Because *of* the record and proceedings, as also in the rendition of the judgment, which is in the Supreme Court of the State of Nevada, before you on the 22nd day of July, 1915, a Petition for Rehearing and to set aside said judgment having been denied by the Supreme Court of the State of Nevada on the 28th day of September, 1915, being the highest court of law or equity of said State of Nevada in which a decision could be had in said action in said suit between State of Nevada, designated as Plaintiff and Respondent, and Wells, Fargo & Company, a corporation, designated as Defendant and Appellant, wherein was drawn into said controversy rights, privileges and immunities claimed under the Constitution of the United States, and particularly the 14th Amendment thereof, and particularly that portion of the Constitution of the United States which gives to Congress the exclusive right to regulate commerce with foreign nations and among the several states, and with the Indian tribes, and the decision is against the rights, privileges and immunities set up and claimed and manifest error has happened to said Wells, Fargo & Company, a corporation, as by its complaint appears.

244 We being willing that error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, then under your seal, distinctly and openly you send the proceedings and records aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this Writ, so that you have the same in said Supreme Court of the United States at Washington within sixty days from the date hereof, that the records and proceedings aforesaid being inspected, the said Supreme Court may cause furth*dr* to be done therein to correct that error, which of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States this 8th day of November, in the year of our Lord nineteen hundred and fifteen; done in the City of Carson, County of Ormsby, State of Nevada, with the seal of the District Court of the United States for the District of Nevada attached.

[Seal District Court, District of Nevada.]

T. J. EDWARDS,
Clerk of the District Court of the United States, District of Nevada.

The foregoing Writ of Error is hereby allowed, the same to operate as a supersedeas according to the customs and laws of the United States.

Dated this 8th day of November, 1915.

F. H. NORCROSS,
Chief Justice Supreme Court of Nevada.

245 In the Supreme Court of the United States.

WELLS, FARGO & COMPANY, a Corporation, Plaintiff in Error,
vs.
STATE OF NEVADA, Defendant in Error.

Citation to Defendant in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to State of Nevada, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C. within sixty days of the date hereof pursuant to a Writ of Error filed in the office of the Clerk of the Supreme Court of the State of Nevada, wherein Wells, Fargo & Company, a corporation, is Plaintiff in Error, and you, State of Nevada, are Defendant in Error, to show cause, if any there be, why the judgment rendered against said Plaintiff in Error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of Nevada, this 8th day of November, A. D. 1915.

F. H. NORCROSS,
Chief Justice of the Supreme Court of the State of Nevada.

H. R. MIGHELS,
Clerk of the Supreme Court of the State of Nevada.

245¼ Service of the Foregoing Citation is hereby admitted this 8th day of November, 1915.

GEO. B. THATCHER,
Attorney General of Nevada.

245½ [Endorsed:] (Original.) In the Supreme Court of the United States. Wells, Fargo & Company, a Corporation, Plaintiff in Error, vs. State of Nevada, Defendant in Error. Citation to Defendant in Error. Messrs. Hoyt, Gibbone & French, Attorneys at law, Herz Building, Reno, Nevada, Attorneys for Plaintiff in Error.

246 In the Supreme Court of the State of Nevada.

WELLS, FARGO & COMPANY, a Corporation, Plaintiff in Error,
vs.
THE STATE OF NEVADA, Defendant in Error.

Admission of Service.

I hereby admit service of certified copies of Petition for Writ of Error, Order allowing Writ of Error, Assignments of Error, Writ of Error, Citation to Defendant in Error, and Præcipe, in the above entitled action.

Dated Nov. 8th, 1915.

GEO. B. THATCHER,
Attorney General of the State of Nevada, Attorney for Defendant in Error, State of Nevada.

246½ [Endorsed:] (Original.) 2119. In the Supreme Court of the State of Nevada. Wells, Fargo & Company, a corporation, Plaintiff in Error, vs. The State of Nevada, Defendant in Error. Admission of service. Filed Nov. 8, 1915. H. R. Mighels, clerk. Messrs. Hoyt, Gibbons & French, Attorneys at law, Herz Building, Reno, Nevada, Attorneys for Plaintiff in Error.

247 In the Supreme Court of the United States.

WELLS, FARGO & COMPANY, a Corporation, Plaintiff in Error,
vs.
STATE OF NEVADA, Defendant in Error.

To the Honorable H. R. Mighels, Clerk of the Supreme Court of the State of Nevada:

You will please certify and forward to the Supreme Court of the United States a transcript of the record in the case of State of Nevada, Plaintiff and Respondent, versus Wells, Fargo & Company, a corporation, Defendant and Appellant, said transcript of the record to contain all of the papers in said cause in this Court, and particularly the Transcript on Appeal, and particularly the following papers, to-wit:

Transcript on Appeal consisting of—
Complaint,
Summons,
Demurrer to Complaint,
Defendant's Answer,
Defendant's Amended Answer,
Defendant's Amendment to Answer,
Findings of Fact,
Judgment,
248 Decision of the Court,
Opinion of the Court,
Statement on Motion for a New Trial,
Order Denying New Trial,
Notice of Appeal,

Undertaking on Appeal,
Decision and Opinion of the Supreme Court of the State of Nevada,
Order Denying Petition for Re-hearing.

You will also please forward to the Supreme Court of the United States:

Petition for Writ of Error,
Order Allowing Writ of Error,
Assignments of Error,
Bond on Writ of Error,
Writ of Error,
Citation to Defendant in Error together with proof of service thereon.

Yours respectfully,

HOYT, GIBBONS & FRENCH,
Attorneys for Wells, Fargo & Company,
Plaintiff in Error.

248½ [Endorsed:] (Original.) In the Supreme Court of the United States. Wells, Fargo & Company, a Corporation, Plaintiff in Error, vs. State of Nevada, Defendant in Error. Præcipe. Messrs. Hoyt, Gibbons & French, Attorneys at law, Herz Building, Reno, Nevada, Attorneys for Plaintiff in Error.

249 *Certificate of Clerk of the Supreme Court of the State of Nevada to Transcript of Record.*

In the Supreme Court of the State of Nevada, *ss:*

I, H. R. Mighels, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, hereby certify that the papers contained in the foregoing transcript are correct copies of the original papers on file in my office, and are those designated and demanded of me by the Attorneys of the Plaintiff in Error, by their Præcipe served on me, and request made to prepare transcript, in accordance with such practice, and that the same is a true and correct transcript of Record, as demanded by the Attorneys for Plaintiff in Error.

That the costs of this record, amounting to $175.00 have been paid by the Attorneys for said Wells, Fargo & Company, a corporation, Plaintiff in Error.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Carson City, Nevada, this 26th day of September, 1915.

[Seal Supreme Court, State of Nevada.]

H. R. MIGHELS, *Clerk.*

[United States internal revenue documentary stamp, series of 1914, ten cents, canceled 9/28, 1915. H. R. M.]

Endorsed on cover: File No. 25,526. Nevada Supreme Court. Term No. 696. Wells Fargo & Company, plaintiff in error, vs. The State of Nevada. Filed October 2d, 1916. File No. 25,526.

In the Supreme Court of the United States.

WELLS FARGO & COMPANY, a Corporation, Plaintiff in Error,

vs.

STATE OF NEVADA, Defendant in Error.

Stipulation.

Whereas, heretofore a certain stipulation was entered into by and between counsel for the respective parties herein relative to amendments of assignments of error, which stipulation and amendments of assignments of error were by said stipulation to be included in the record on appeal herein; and

Whereas, through mistake and inadvertence the said stipulation and said amendments of assignments of error were not included in the record on appeal herein and the original stipulation although filed in the Clerk's office of the Supreme Court of the State of Nevada has been lost or mislaid;

Now therefore, it is hereby stipulated that the attached Exhibit "A" is a correct copy of said stipulation and said assignments of error, and it is further stipulated that said stipulation and said assignments of error herein shall be considered as a part of the record on appeal herein, and said assignments of error contained in said amendments of assignments of error shall be considered as a part or portion of the assignments of error on appeal herein and shall be considered by the Court herein as a part thereof and the said cause heard and determined with the same force and effect as if said assignments of error included in said Exhibit "A" were included within and a part of the record on appeal heretofore filed herein.

GEO. B. THATCHER,
Attorney General of Nevada, Attorney for Defendant in Error.

CHAS. W. STOCKTON,
HARRY S. MARX,
HENRY M. HOYT,
HOYT, GIBBONS & FRENCH,
Attorneys for Plaintiff in Error.

EXHIBIT "A."

In the Supreme Court of the United States.

WELLS FARGO & COMPANY, a Corporation, Plaintiff in Error,

vs.

STATE OF NEVADA, Defendant in Error.

Stipulation.

It is hereby stipulated by the defendant in error herein that the amendments of assignments of error Nos. 1, 2, and 3, attached hereto, may be included in the record on appeal and incorporated therein, together with this stipulation, and as so incorporated, certified to the Supreme Court of the United States as a part thereof.

HOYT, GIBBONS & FRENCH,
HENRY M. HOYT, 2d,
C. W. STOCKTON,
HARRY S. MARX,
Attorneys for Plaintiff in Error.
GEO. B. THATCHER,
Attorney General of Nevada.

So ordered upon the above stipulation.

F. H. NORCROSS,
Chief Justice of the State of Nevada.

In the Supreme Court of the United States.

WELLS FARGO & COMPANY, a Corporation, Plaintiff in Error,

vs.

STATE OF NEVADA, Defendant in Error.

Amendments to Assignments of Error.

Comes now the plaintiff in error in the above entitled cause and by stipulation attached hereto, avers and shows that the record and proceedings in said cause show that the Supreme Court of Nevada erred, to the grievous injury and wrong of the plaintiff in error herein, and to the prejudice and against the rights of the plaintiff in error, as follows:

1. The assessment and tax in question results in unequal taxation of the plaintiff in error and denies the plaintiff in error the equal protection of the laws, in violation of the Fourteenth Amendment of the United States Constitution.

2. The assessment and tax in question place a burden on Inter-

State commerce by taxing the same and the property therein used in larger proportion than other property in the State was taxed, in violation of the clause of the United States Constitution known as the Commerce Clause, relating to the regulation by Congress of commerce with foreign nations, and among the several States, and with the Indian tribes.

3. The manner of making the assessment in question amounts to a fraud upon the constitutional rights of the plaintiff in error and deprives it of its property without due process of law, and denies to it the equal protection of the law, all in violation of the Fourteenth Amendment of the Constitution of the United States.

Wherefore, the plaintiff in error prays that the judgment aforesaid of the Supreme Court of the State of Nevada be reversed, annulled and set aside.

HOYT, GIBBONS & FRENCH,
HENRY M. HOYT, 2D,
C. W. STOCKTON,
HARRY S. MARX,
Attorneys for Plaintiff in Error.

[Endorsed:] 279/25,526. Original. No. —. In the Supreme Court of the United States. Wells Fargo & Company, a Corporation, Plaintiff in Error, vs. State of Nevada, Defendant in Error. Stipulation. Filed —— —, 1917. —— ——, Clerk. By —— ——, Deputy. Hoyt, Gibbons & French, Henry M. Hoyt, 2d, C. W. Stockton, Harry S. Marx, Attorneys for Plaintiff in Error.

[Endorsed:] File No. 25,526. Supreme Court U. S., October Term, 1917. Term No. 279. Wells Fargo & Company, Pl'ff in Error, vs. The State of Nevada. Stipulation of Counsel and Addition to Record. Filed March 20, 1918.

No. 40

Supreme Court of the United States.

OCTOBER TERM, 1915.

WELLS FARGO & COMPANY,

Plaintiff in Error,

vs.

THE STATE OF NEVADA,

Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEVADA.

BRIEF OF PLAINTIFF IN ERROR.

CHARLES W. STOCKTON,

HARRY S. MAY,

Counsel for Plaintiff in Error.

HOYT, STOCKTON & BRANCH,

Of Counsel.

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Supreme Court of the United States,

OCTOBER TERM, 1916.

WELLS FARGO & COMPANY, Plaintiff-in-Error, vs. THE STATE OF NEVADA, Defendant-in-Error.	Docket No. 25,526.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEVADA.

BRIEF OF PLAINTIFF-IN-ERROR.

I.

Statement of the Case.

This action was brought by the State of Nevada against Wells Fargo & Company, plaintiff-in-error, and certain property of said Wells Fargo & Co., to recover taxes claimed to be due in Humboldt County in the State of Nevada.

Suit was brought in the County of Humboldt. The complaint alleged that an assessment had been made against Wells Fargo & Company upon property described as follows (R., 2):

> "The right to carry express and right to transact all other business, then and there, and commonly done and transacted by the said

> Wells, Fargo & Company over the railroad mileage operated by the Southern Pacific Company, a Corporation, on that Railroad, passing through said Humboldt County * * * to the Southerly boundary line of said County * * * The railroad mileage of the said Southern Pacific Company within the said County of Humboldt, on which the said Wells, Fargo & Company operates its said express business is One Hundred Forty and Fourteen one Hundredths (140.14) miles, at a valuation for the said Business of three Hundred Dollars ($300.00) per mile."

The valuation thus arrived at was $42,042.00, and the action was brought to recover state, county, school, town, etc., taxes, based upon said valuation in the amount of $694.53, together with 10 per cent. damages for non-payment thereof, and 25 per cent. additional penalty for costs and disbusements of the action (R., 2).

The answer alleged, among other things, that the defendant was, at all the times mentioned, engaged in interstate commerce as follows (R., 6):

> "in carrying express matter from the State of Nevada into the different States of the Union, and from the different States of the Union into the State of Nevada, and at all times herein mentioned, has been and now is engaged in interstate commerce in the State of Nevada, and carried express matter in course of transit from the State of Nevada into other States of the United States, and from other states into the State of Nevada, and transacted its said interstate business over the railroad mileage, and upon the railroad track described in the complaint herein, and that at all times herein mentioned, this defendant has used the right of property described in the complaint herein for the purpose of conducting its said interstate business".

The answer further alleged that the taxes described in the complaint were imposed upon the right of defendant to conduct and transact its said interstate business; that the total property owned by the defendant in the entire State of Nevada, exclusive of real property, which was separately taxed as such, amounted to $11,374.67, and that the total property owned and used by defendant and situated in the County of Humboldt amounted to $383.98; that if the property so owned and used by the defendant in the County of Humboldt was taxed at the same rate and in the same manner as other property situated in said county and owned by individuals and corporations other than this defendant, the tax would amount to $6.32 (R., 12).

At the trial of the case the assessor as a witness and his assessment roll introduced in evidence, showed the assessment levied upon the property described as follows (R., 30):

> "That certain property belonging to Wells Fargo & Co., to wit: Right to carry express and right to transact all other business commonly done and transacted by Wells, Fargo & Co., over the railroad mileage operated by the Southern Pacific Company within the County of Humboldt. The railroad mileage of the said Southern Pacific Company within the County of Humboldt on which the said Wells, Fargo & Co. operates their express business is 140.14 miles at a valuation of $300. per mile, tax $694.53, penalties $69.45, costs $2. total tax $765.98."

When interrogated upon cross-examination as to what property the assessment covered, the examination was as follows (R., 32):

> "Q. Mr. Leonard you say you are familiar with the property described in this complaint?

A. As well as you can be with property of that kind.

Q. What is that property?

A. Just as I have described it there; that is the only way I can explain it.

Q. You have just described it as you have stated, and you say you are familiar with it? What is it?

A. It is the right of Wells Fargo Company to transact an express business in and through the County of Humboldt.

Mr. Gibbons: That is all.

The Court: Is that all?

Mr. Baker: I desire to ask a question or two.

Redirect-examination.

Mr. Baker:

Q. You can take that paper there Mr. Leonard and see if there is anything else you desire to add in explanation to what you have already answered?

A. Well, I could read that and it would be my answer in full.

Q. You may refresh yourself, and your memory, with any data you may desire?

A. 'The right to carry express, and right to transact all other business commonly done and transacted by Wells, Fargo & Company'.

(Reading from Exhibit 'A' in evidence.)

Mr. Baker: That is all.

Recross-examination.

Mr. Gibbons:

Q. You said you are familiar with the property: All you know about it is what those words convey to you is it not Mr. Leonard?

A. Yes, sir.

Q. You never saw the property?

A. As much as anybody can see it.

Q. Well, did you ever see it?

A. I have seen part of the business.

Q. Yes, but that is about all any one can know about the property there, the description that is contained therein?

A. Yes, sir.

Q. You did not see that property in the county?

A. It is intangible.

Redirect-examination.

Mr. Baker:

Q. Did you ever see or know of anybody who ever saw much Wells, Fargo & Company property in this county?

A. I have not found anybody yet.

Mr. Baker: That is all.

Mr. Gibbons: That is all.

The Court: That will be all Mr. Leonard.

Mr. Baker: The state rests" (R., 33-34).

The defendant introduced in evidence from its Division Superintendent a statement of the tangible personal property owned by the Company and situated in Nevada, and which showed that in Humboldt County the value of the property was $389.98 (R., 85).

The Company also showed that it paid taxes on its real estate in the State in addition to the taxes herein sought to be levied (R., 83). It also introduced inventories showing that its property in the entire State, other than real estate, amounted to $11,374.67 (R., 89-90-91). That its intrastate receipts from express operations within the State of Nevada for the year 1910 were $76,342.18; that its expenses, including taxes of $2,543.26, were $70,116.57, leaving a net income of $6,225.61 (R., 93). Its rail mileage in the entire State was 1,725 miles (R., 55).

The plaintiff made no attempt to support the valuation fixed by the assessor, and it did not make

any attempt to define or otherwise describe the property assessed than as shown in the bill of complaint and in the assessment roll.

At the time the assessment was made, a statute of the State of Nevada (R., 129) required the Assessors throughout the State to meet in the Governor's office in the month of January, and as a body, called the Board of Assessors, arrive at valuations for properties which could be better assessed by the assessors collectively than by them individually. Such properties were sheep, horses, telegraph lines and railroads, but express companies were not mentioned and had never been assessed by this body prior to the year in suit.

At the meeting of the assessors in January, 1910, a statement was submitted by the Governor which had been prepared by a member of the Nevada Railroad Commission purporting to show the earnings of Wells Fargo & Co. for the year ending June 30, 1909, and continuing as follows:

> "Comparing the Wells-Fargo Express Company as a revenue producer and a taxpayer, attention may be directed to the fact that the Tonopah and Goldfield Railroad, which is a Nevada corporation, with gross earnings for the past year of $910,000, paid towards the maintenance of the county and State governments in taxes $45,850.66, while by contrast it may be noted that the Wells-Fargo Express Company, with gross earnings of $850,000, only paid in taxes $2,657.74.
>
> Further contrast in taxes may be shown by taking the Virginia and Truckee Railway with gross earnings of only $295,000, and it is noted that they paid in taxes for the past year $16,366, while the Wells Fargo Express Company, with gross earnings of $850,000, only paid in taxes $2,657.74.
>
> It has been suggested by your Chairman

that a per mile valuation should be assessed against this Company in order that the various counties and the State may receive their just proportion of taxes.

To find the valuation the 4 per cent of gross earnings basis may be used, or net earnings may be capitalized on a basis of 7 per cent. The net earnings as reported to the commission are $291,084.85, and this amount is 7 per cent on $4,000,000 which could fairly be taken as the value of express company's property, real, personal, and intangible, franchises, etc., within the State of Nevada. Applying 40 per cent of this valuation the same as other property is assessed in Nevada, we have a valuation of $1,600,000 for the purpose of taxation within this State. This company is operating within the State 1,890 miles of rail and stage line, and this would make an assessed valuation of $847 per mile.

Assuming that an average levy of 2 per cent was applied it would produce $16.94 per mile, or a total of approximately $32,000, in gross taxes to the State and counties.

If the 4 per cent of gross earnings basis is used it may be noted that this will produce $34,000 in taxes for State and counties.

The railroad express mileage of the Wells-Fargo Express Company in the State is approximately 1,700 miles and the stage-line mileage is 200 miles.

If it is found expedient to eliminate the stage mileage and place an assessment valuation of $500 per mile on the 1,700 miles of railroad express mileage, it will make an assessed valuation of the express company's taxable property, tangible and intangible, of $850,000, and assuming that an average levy of 2 per cent was applied it would produce a tax of $10 per mile, or $17,000 in gross taxes for the State and counties."

Judge Bartine, a member of the Nevada Railroad Commission, addressed the assessors' meeting and

read to them the decision of the United States Supreme Court in Adams Express Co. *vs.* Ohio, 166 U. S. 185. The minutes of the meeting showing the assessment of plaintiff-in-error were as follows (R., 121-122):

> "Judge Bartine: * * * Let me suggest further that in this Ohio case which I read the entire property of the express company was included by the Supreme Court to make it $16,000,000—$4,000,000 tangible and $12,000,000 consisting of the business they were doing. They were all lumped in together. So if you fix a valuation of $300 per mile, that would include all the utilities they use in the transaction of their business, and not tax them separately.
>
> Mr. Owens: Mr. Chairman, I move that a valuation of $300 per mile be placed against Wells, Fargo & Company for all the railroad mileage they have in the State of Nevada.
>
> Mr. McBurney: I second the motion.
>
> Mr. Miles: Mr. Chairman, in this case, if it is levied on mileage only and not on horses, wagons, offices, office furniture, etc., the question is now as to whether or not the Assessor in including those items of property could seize and sell such property for the taxes, provided there was enough of that kind in the county.
>
> Judge Bartine: I don't think there is any question about it at all as long as $300 per mile is placed as the valuation of their property. The Supreme Court has said that it is just to take aggregate mileage as the basis in order to find out what the rate of taxes should be. If you make the total tax $300 per mile in your county, that includes the offices, office furniture, safe and wagons and horses, etc., because they cannot do the business without these things, and when you levy the tax of $300 per mile that is the entire tax to be levied upon that company.

> Mr. Owens: I will include that in my motion. I would like to know for the information of the board, after listening to the statement by Judge Bartine, if the various buildings are not included in that intangible property?
>
> * * * * * *
>
> The Clerk called the roll, and the motion to place a valuation of $300 per mile on Wells, Fargo & Company was unanimously carried."

Plaintiff-in-error was not notified that it or its property was to be assessed at this meeting and it was not represented at the meeting (R., 84).

The findings of fact and conclusions of law of the trial court which begin on page 15 of the transcript, were that the Company was engaged in carrying express matter from and to the State of Nevada into and from the different States in the Union, and from points within Nevada to other points within Nevada, and from points without Nevada through the State of Nevada to other points without the State of Nevada, passing through said Humboldt County; that the Company was the owner of the property described in the complaint, namely, the right to carry express, etc.; that the State Board of Assessors Fixed a "valuation for taxable purposes on the said property of the defendant at the rate of $300. per mile"; that after the meeting of the Board of Assessors, the assessor of Humboldt County "Did duly assess and put down on an assessment roll all the real and personal property in said County subject to taxation, and the said assessment roll was afterwards submitted to the Board of Equalization of said County and by said Board was duly equalized as provided by law, that said Wells Fargo & Company was then and there the owner of and that there

was duly assessed to it the above described personal property, and that the plaintiff should have judgment against the defendant Wells Fargo & Company in the sum of $694.53 taxes and penalties, etc., making in all $937.61, together with the plaintiff's costs and disbursements of suit.

The Company carried the case on appeal to the Supreme Court of Nevada and that court affirmed the judgment of the lower Court. The case is before this court on writ of error awarded November 8, 1915.

II.

Specification of Errors Relied Upon.

FIRST: The tax is levied upon the right to carry on interstate commerce contrary to Sec. 8, Art I. of the Constitution of the United States.

SECOND: The tax is not levied upon an assessment of the value of the right taxed but is an arbitrary taxation thereof in violation of Sec. 8, Art. I, of the Constitution of the United States.

THIRD: The assessment was without notice to plaintiff-in-error and without opportunity to be heard and therefore plaintiff-in-error has been deprived of its property without due process of law in contravention of the 14th amendment of the Constitution of the United States.

FOURTH: The tax is a tax upon the earnings and not upon the property of plaintiff-in-error and was therefore without foundation either in the law of Nevada or of the United States and was a taking of property without due process of law contrary

to the 14th amendment of the United States Constitution.

FIFTH: The assessment and taxation in question results in unequal taxation of the plaintiff-in-error and of its property and denies to plaintiff-in-error the equal protection of the laws in violation of the 14th amendment to the United States Constitution.

SIXTH: The assessment and tax in question place a burden on interstate commerce by taxing the same and the property therein used in larger proportion than other property in the State was taxed, in violation of the clause of the United States Constitution known as the Commerce Clause.

SEVENTH: The manner of making the assessment in question amounts to a fraud upon the constitutional rights of the plaintiff-in-error and deprives it of its property without due process of law, and denies to it the equal protection of the law, all in violation of the 14th amendment of the Constitution of the United States.

III.

Argument.

As stated by the Supreme Court of Nevada there are three principal questions in this case, in presenting which we use the language of that court (R., 126):

1st, Is the tax sought to be recovered in whole or in part a tax on interstate commerce?

2nd, If not a tax on interstate commerce, but upon property of the appellant corporation within

the state, was the assessment made in accordance with law?

3rd, If property subject to taxation has been regularly assessed is the assessment out of proportion to and above the actual cash value of the property?

The Nevada Supreme Court in discussing the first question deals only with the power of the state to tax the property of express companies within its borders (which is of course conceded) and entirely avoids any clear definition of the *thing* sought to be taxed in this case.

Obviously the first step in frank treatment of this case is to ascertain *what* the state is endeavoring to tax before passing to the further question of *how* it is taxed and *how much* relatively.

A. The tax is laid upon the right to conduct business and not upon the property employed in the business.

The complaint alleges the assessment of

> "That certain property belonging to Wells Fargo & Company, to wit, the right to carry express and right to transact all other business then and there and commonly done and transacted by said Wells Fargo & Company over the railroad mileage operated by the Southern Pacific Company, a corporation, on that railroad track known as the Central Pacific Railroad passing through said Humboldt County * * * (description of line). The railroad mileage of said Southern Pacific Company within the said County of Humboldt on which the said Wells Fargo and Company operates its said express business is 140.14 miles at a valuation for the said business of $300 per mile."

The assessment roll, introduced in evidence (R., 57), is in the same language. The County Assessor of Humboldt County testified again and again that the best description he could give of what he assessed was "the right of Wells Fargo & Company to transact an express business in and through Humboldt County".

Asked if he had ever seen the property, he replied "I have seen it as much as anybody can see it. I have seen part of the business. It (the property) is intangible".

We are therefore relieved of any doubt as to *what* the state has assessed. It is the *right* to transact an express business in and through Humboldt County.

The next step, we conceive, is to ascertain the character of the *business,* the *right to transact* which is assessed.

The evidence shows that the total business transacted by Wells Fargo & Company (R., 58-59), at points in Humboldt County for the year ending June 30, 1908, was $61,227.98, of which $11,105.87 (18%) was intrastate; the remainder, $50,122.07 (82%), included the total charges on interstate business received and forwarded at points in that county.

For the entire state for the same period the proportion of intrastate was less, being $124,794.12 (14.7%) as against $725,391.56 (85.3%) of interstate business received and forwarded. These quotations of figures are from those presented to the State Board of Assessors by Railroad Commissioner Shaughnessy at the time the valuation of $300 per mile was fixed by that body. The Assessor of Humboldt County was present at the sessions of that Board.

The business transacted being therefore more than eighty per cent. interstate in character, it is clear that the tax upon the right to transact that business is a tax imposed primarily and principally upon the *right to transact interstate commerce*, since the language of the assessment emphatically negatives any suggestion that the tax is laid upon the right of conducting business entirely within the state, even if the pleadings (R., 16) did not specifically deny such intention. The question therefore is narrowed to the proposition, "Can the state tax the right to conduct interstate commerce?"

This question would seem to have been decisively determined by this Court in the negative. As said in Adams Express Co. *v.* Ohio, 165 U. S. 194, at page 220:

> "Although the transportation of the subjects of interstate commerce or the receipts received therefrom or the occupation or business of carrying it on cannot be directly subjected to state taxation, yet property belonging to corporations or companies engaged in such commerce may be, and whatever the particular form of the exaction, if it is essentially only property taxation it will not be considered as falling within the inhibition of the Constitution."

In the opinion in the Ohio case, above cited, denying the application for a rehearing, 166 U. S. 185, at page 218, Justice Brewer said:

> "Again and again has this Court affirmed the proposition that no state can interfere with interstate commerce through the imposition of a tax, by whatever name called, which is in effect a tax for the privilege of transacting such commerce; and it has as often affirmed that such restriction upon the power

> of a state to interfere with interstate commerce does not in the least degree abridge the right of a state to tax at their full value all the instrumentalities used for such commerce."

In U. S. Express Co. *v.* Minnesota, 223 U. S. 335, at page 342, it was said by this Court:

> "It is thoroughly well settled in this court that state laws may not burden interstate commerce.
>
> "As one form of burden may exist in *taxing the conduct* of interstate commerce, such taxation has been uniformly condemned." (Citing Fargo *v.* Michigan, 121 U. S. 230; Phila. & So. S. S. Co. *v.* Penn., 122 U. S. 326; Rotterman *v.* Western Union, 127 U. S. 411; Leloup *v.* Mobile, 127 U. S. 640; W. U. Tel. Co. *v.* Penn., 128 U. S. 39; W. U. Tel. Co. *v.* Ala., 132 U. S. 472; G. H. & S. A. Ry. *v.* Texas, 210 U. S. 217.) (Italics ours.)

The fundamental error of the state in this case appears to have arisen from a misconception of the effect of the decision of this Court in the case of Adams Express Co. *v.* Ohio, *supra*. This error appears in the failure to distinguish the essential difference as the subject of state taxation between the right to transact interstate commerce and the property which may arise from the exercise of that right.

From dicta in the opinion by Mr. Justice Brewer denying the application for a rehearing the idea seems to have arisen in Nevada that the intangible property of an express company consists solely of its *franchise to do* and that the right or privilege or franchise to transact its interstate business may be directly assessed as property. The real principle involved in the Ohio case, *i. e.*, the ascertainment of the unit value of the plant and the distri-

bution of the intangible value over the entire field of operations by some proper measure, seems to have been entirely overlooked, not only by the assessors, but by the courts of Nevada in sustaining the pretended assessment. It must be admitted that a casual reading of the opinion of the Court in 166 U. S. gives some color to such a construction, but we think that the real meaning of the Court fully appears in the question at page 225 of the opinion:

> "Do not these intangible properties—these franchises to do—exercised in connection with the tangible property which it holds, *create a substantive matter of taxation* to be asserted by every state in which that tangible property is found?" (Italics ours.)

The assessors, being advised by a member of the Railroad Commission, who read to them the opinion of the Court in the Ohio case, that the state had the power to assess the right of an express company to do business, appear to have reached the conclusion that the only thing necessary for the state to exercise such power was for the assessors to make a rough estimate of the value of the business from data secured from another Railroad Commissioner and assess the right itself at the valuation so obtained.

The prime necessity for some adequate data as to the market price of the express company's stock, its operative and non-operative property, its gross and net earnings and expenses, and, above all, the necessity in common fairness of notice and a hearing, seem to have been entirely overlooked or perhaps never realized.

Whatever may have been the intentions of the assessors in making the assessment, it seems clear that the state must stand or fall upon the language

employed in the assessment roll, upon which the plaintiff-in-error had a right to rely, and did in fact rely, as describinng the property which the state had undertaken to assess. Even if we grant that, as now appears probable, it was the intention of the assessors by this crude and imperfect proceeding, based upon admittedly wrong information, to assess the intangible property of the express company, it is too late for the state now to urge that they intended to assess only the property and not the right to do business.

We conceive that it is unnecessary for us to argue the proposition of the lack of power of the state to tax the right to conduct interstate commerce or the right of free and unrestricted intercourse in such commerce. The power to tax being the power to destroy, it seems obvious that the application of the Nevada theory would in effect nullify the Commerce Clause of the Constitution and substitute for the exclusive power of Congress in regulating such commerce the whim of any county assessor of the several states. The necessity, however, of safeguarding against the encroachment of the states has been fully recognized by the Court in the statement in Flint *v.* Stone Tracy Co., 220 U. S. 107, quoting from the opinion in Knowlton *v.* Moore, 178 U. S. 41:

> "In other words, the power to destroy which may be the consequence of taxation is a reason why the right to tax should be confined to subjects which may be lawfully embraced therein even although it happens that in some particular instance no great harm may be caused by the exercise of the taxing authority as to a subject which is beyond its scope."

In an early case, in which this same State of Nevada sought to encroach on Federal powers

(Crandall *v.* Nevada, 6 Wall. 35), this Court aptly commented:

> "It will be observed that it was not the extent of the tax in that case (The Passenger Cases, 7 How. 283) which was complained of but the right to levy any tax of that character. So in the case before us it may be said that a tax of one dollar for passing through the State of Nevada, by stage coach or by railroad, cannot sensibly affect any function of the government, or deprive a citizen of any valuable right. But if the State can tax a railroad passenger one dollar, it can tax him one thousand dollars. If one State can do this, so can every other State. And thus one or more States covering the only practicable routes of travel from the east to the west, or from the north to the south, may totally prevent or seriously burden all transportation of passengers from one part of the country to the other."

As pointed out by the Court in Paul *v.* Virginia, 8 Wall. 168, the right of free and unrestrained intercourse is not confined to natural persons but extends also to corporations.

If the State of Nevada may tax the right of an express company to carry express through Nevada, it may with equal propriety tax the right of the railways, now operated by the Government, to carry freight and passengers from Utah to California through Nevada and thus set up a toll gate against all commerce, fixing the tolls at its pleasure.

B. No bona fide attempt was made to assess the property of plaintiff-in-error.

The minutes of the State Board of Assessors (R., 120, 121-124) clearly indicate that there was no real attempt to ascertain the value of either the property or business of plaintiff-in-error but, in-

stead, a design to increase the taxes paid by plaintiff-in-error from $2,657.74 to $17,000.00, the latter amount being 2 per cent. on the gross earnings in the State, incorrectly reported by Railroad Commissioner Shaughnessy as $850,000. These figures, which Mr. Shaughnessy admitted on the trial were inaccurate, included the entire earnings from shipments in interstate commerce received at Nevada points from points outside the state and forwarded from Nevada points to points outside the state. No attempt was made either by Mr. Shaughnessy or by the Board of Assessors to arrive at the proportion of such earnings accruing within the State of Nevada, but Mr. Shaughnessy made the statement that he estimated that the proportion accruing in Nevada on business passing entirely through the state would equal the amount of the excess earnings so included, at the same time admitting that he did not know what the through earnings were but judged from his experience with respect to freight handled by the railroads. It will be seen, therefore, that the information before the Board of Assessors, upon which they undertook to fix the value of the business, was not of such a character as to justify any person of ordinary intelligence attempting to reach a real approximation of the value of the business or of the right which was taxed, and that there was no real assessment and no *bona fide* attempt to reach these values, but merely a guess on wholly insufficient data. The figures presented by Mr. Shaughnessy were figures from reports of plaintiff-in-error filed with the State Railroad Commission, and were, therefore, not admissible in a tax proceeding.

Atchison, &c., Ry. Co. *v.* Sullivan, 173 Fed. 456.

L. & N. R. Co. *v.* Bosworth, 173 Fed. 380.

No notice was given to the plaintiff-in-error of the proceedings, no data of any kind were asked for upon which to make an ascertainment of value, nor was any opportunity given for any correction of the manifest mistakes of the Board of Assessors.

The law under which the Board of Assessors met was passed in 1901 and at that time covered certain specific kinds of property which the assessors were required to value. In 1903 a clause was added to the law which gave the assessors power to value

> "other kinds of property which in the judgment of said assessors can be valued and assessed more uniformly by said assessors acting collectively than by the several county assessors acting separately."

During the next seven years the Board of Assessors did not attempt to assess the property of express companies, and we think, therefore, may be fairly presumed to have construed the law as not giving them such power. The language of the Act would seem to be clearly in line with this construction and to limit the assessors to the assessment of tangible, physical property. The terms employed—

> "shall establish a valuation through the state of all railroads and rolling stock of such railroads, of all telegraph and telephone lines, of all electric-light and power lines, of all cattle and sheep—"

clearly import only physical or tangible property and were apparently so construed by the Board in fixing the value of railroad lines and equipment and rolling stock of railroads and the physical value of electric-light, telegraph and telephone lines. The term "rolling stock of such railroads"

following the term "railroads" clearly negatives any idea of assessing intangible property. If the term "railroads" should be construed as including all property, including intangibles, of such railroads, the term "rolling stock of such railroads" following would be entirely superfluous and meaningless; and the authority to value telegraph, telephone, electric-light and power *lines* is too restricted to admit that such language was intended to comprehend the assessment of all property of telegraph, telephone, electric-light and power companies.

The general clause contained in the 1903 amendment is, we think, clearly an unconstitutional delegation of legislative power to the Board of Assessors, vesting them with discretionary power as to what property within the state they shall value collectively and what property shall be valued individually by them as county assessors. The Act specifically provides that the property which shall be valued by the Board of Assessors shall not be equalized by the County Boards of Equalization, and the effect, therefore, of the statute is to vest in the State Board of Assessors the power to classify property in the state at their pleasure and to deprive certain kinds of property of the privilege of equalization by the county boards. If such discretionary power be not a delegation of purely legislative power it is difficult to conceive what would fall within that definition.

C. The assessment is excessive, is based upon admittedly erroneous computations, and is a burden upon interstate commerce.

The grossly excessive valuation placed upon the business of plaintiff-in-error by the State Board of Assessors seems to have been largely due to the misinformation received by the Board from two

members of the State Railroad Commission. One of these, Mr. Shaughnessy, made up figures from the reports filed with the Railroad Commission purporting to show the gross and net earnings of Wells Fargo & Company in the State of Nevada for the year 1908 as a basis for taxes for 1910.

Mr. Shaughnessy on the trial of the case testified that this figure of earnings in Nevada given by him included intrastate earnings of $124,794.12 and interstate earnings of $725,391.56 and that he had made no attempt to ascertain what proportion of this interstate business accrued within the state of Nevada In other words, he had included in Nevada earnings the entire charges on express shipments to Nevada points from the point of shipment, whether New York, Chicago or other commercial supply points, upon which the greatest mileage proportion accruing in Nevada might be only 5 or 10 per cent. (R., 62, 64-65).

He further testified that in his estimate of expenses of the express company his figures presented to the Board of Assessors included only local expenses paid in Nevada and did not include the expense of train messengers, supplies, accounting or any general expenses whatever, and under a revision of his estimate of profit made to the Board of $291,000, reduced the estimate of profit to $94,158 (R. 70), reaching this estimate, however, by taking the average of all expenses for the system and applying it to gross earnings of $850,0[illegible] and therefore perpetuating his admitted error of including as Nevada earnings those accruing in other states to an unknown extent.

The report of intrastate business quoted being made by taking the total business of each office, it would appear that there is another serious error

in taking the total of these figures as the aggregate business, since the received business at any office also is reported as the forwarded business of some other office in the state, and the total therefore twice the actual business.

If, therefore, we take 25 per cent. of the interstate business as a liberal estimate of the Nevada proportion of the whole, we have a total gross earning of $243,744.95, and allowing the railroad one-half of this and figuring the expenses upon the basis of Mr. Shaughnessy's amended estimate we find a profit of $26,994.75 or $15.65 per mile.

Indulging all the theories of the state to the utmost, therefore, and applying the capitalization of net earnings idea, however untenable, the valuation of the express company's property measured by its net earnings cannot exceed $195 per mile, or under the admitted practice of assessment of 40 per cent of the value, $78.00 per mile.

For the reasons assigned, we respectfully represent that the judgment of the Nevada courts in this case should be reversed.

Respectfully submitted,

CHARLES W. STOCKTON,
HARRY S. MARX,
Attorneys for Plaintiff-in-Error.

HOYT, GIBBONS & FRENCH,
Of Counsel.

Appendix.

LAWS OF NEVADA, 1901.

Chap. L.—An Act to provide for a more uniform valuation and assessment of property in this State.

(As amended by L. 1903, c. LXIX approved March 13, 1903.)

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. The County Assessors of the several counties of this State shall meet for a period not exceeding ten days in the office of the Governor at Carson City, Nevada, on the second Monday in January of each year, and shall at such meetings establish a valuation through the State of all railroads and rolling stock of such railroads, of all telegraph and telephone lines, of all electric light and power lines, of all cattle and sheep, and upon all other kinds of property which in the judgment of said Assessors can be valued and assessed more uniformly by said Assessors acting collectively than by the several County Assessors acting separately; *provided*, that in fixing such valuation the location and situation of such property shall be considered; and, *provided further*, that nothing herein shall be so construed as to impair the right of the Board of Equalization of any county to equalize taxes on all property, the valuation of which has not been fixed at the annual meeting of the County Assessors as provided in this section; but the said County Board

of Equalization shall not have the power to equalize any property upon which a valuation has been placed by the said Board of County Assessors; *provided*, any taxpayer under the provisions of this Act shall not be deprived of any remedy or redress in a court of law relating to the payment of taxes.

SECTION 2. At such meetings the Governor shall be the Chairman and the Governor's Secretary shall be the Clerk. The Governor shall have the casting vote in case of a tie. The State Controller shall supply all information and data concerning the finances of the State, either on his own motion or by request of the Board. Eight Assessors shall constitute a quorum for the transaction of business, and a majority of the entire Board shall decide any question before the meeting; *provided*, that in case of a tie on any question before the Board, the Chairman shall cast the deciding vote; and it is hereby made the duty of every Assessor present at the meeting of said Board to vote aye or no, upon every question put by the Chairman of said meeting, and every Assessor failing so to do shall forfeit his office and shall be proceeded against by the District Attorney of said Assessor's county, at the request of the Attorney-General to enforce said forfeiture; *provided*, that, if at any meeting the Assessor of any county shall, by reason of sickness or other unavoidable cause, be unable to attend any such meeting, then, in that event, the Chairman of the Board of the County Commissioners of such counties shall attend such meeting, and shall act and vote in the place of such absent Assessor, with the same force and effect as such Assessor might do if present, and the Governor or acting Chairman of said meeting shall be and hereby is authorized to issue a subpœna for the attendance of any Assessor

who shall fail to attend, unless excused by the provisions of this Act. And he is hereby further empowered to deputize anyone who is qualified by law to serve a summons to serve the same; and *provided further,* that, if at any meeting the Governor or his Secretary shall, for any reason, be unable to act as Chairman or Clerk, then, in that event, the State Controller shall act as Chairman, and in case the State Controller shall also be absent, then the Attorney-General shall act as Chairman and as such Chairman shall have all of the powers herein granted to the Governor acting as such Chairman. Any Assessor who shall fail to attend the meetings provided for in section one, unless he is prevented by sickness or other unavoidable cause, shall be subject to a penalty of $500, to be collected in a suit instituted against said delinquent Assessor or his bondsmen by the District Attorney of the county of said Assessor, on the request of the Attorney-General; and shall be further subject to removal from office, should a majority of the State Board of Revenue hereinafter created order proceedings to that effect to be instituted.

SECTION 3. The Chairman shall preside at all meetings and the Secretary shall keep a full and correct record of the proceedings thereof, in suitable books which shall be provided for that purpose, and which shall be kept in the office of the Governor.

SECTION 4. The valuation fixed at such annual meetings shall be the actual cash value of all such property as may be designated, as now provided by law, taking into consideration the locality of such property, and the Assessors of the several

counties shall assess and enter upon the assessment rolls of their respective counties all such property at the valuation designated by such meeting of County Assessors, and shall fix the value and assess all property not so valued at said meeting in the manner now provided by law.

SECTION 5. The valuation fixed at such annual meetings shall be uniform on all such property as may be designated, except in cases where the value is affected by its locality or other consideration affecting its cash value; and the Assessors of the several counties of the State shall fix values on all property not so valued at said annual meeting, in the manner now provided by law.

SECTION 6. An annual *ad valorem* tax of eighty cents on each one hundred dollars of taxable property is hereby levied and directed to be collected for State purposes upon all taxable property in this State, including the net proceeds of mines, except such property as is by law exempt from taxation; *provided*, that such rate of eighty cents may be changed as hereinafter provided. Of the tax hereby levied fifty-three and four one-hundredths cents shall go into the General Fund of the State, seven and one-fifth cents shall go into the Territorial Interest Fund, seven and three-fifths cents shall go into the State Interest and Sinking Fund, ninety-six one hundredths of one cent shall go into the State University Interest and Sinking Fund, four cents into the General School Fund, eight-tenths of one cent into the University Interest and Sinking Fund, 1897, No. 1, eight-tenths of one cent into the University Interest and Sinking Fund, 1897, No. 2, and five and three-fifths cents into the Contingent University Fund.

SECTION 7. In assessing all personal property, not secured by real estate, prior to making the final State levy as provided in this section, the State rate of eighty cents on each one hundred dollars valuation, provided in section six, shall be collected and the State proportion shall be forwarded to the State Treasurer in the first semi-annual settlement. Immediately after the Auditor's statement of valuation, provided for in section ten of this Act, shall have been received by the State Controller, the Governor, State Controller and Attorney-General shall meet and ascertain the aggregate valuation of all the taxable property in the State, as reported by the several County Auditors. They shall then proceed to fix the State rate of taxation (not to exceed eighty cents on each one hundred dollars) in proportion as the amount required to conduct the State Government for that year stands to the whole property valuation in the State; but in no case shall they fix a rate which will give the State more revenue than necessary to meet the total amount of appropriations made by the last preceding Legislature.

SECTION 8. When the rate of State tax shall have been fixed as provided in section seven, it shall be the duty of the State Controller to immediately notify the several County Assessors and County Auditors of the same.

SECTION 9. In case of a reduction being made, in the levy for State purposes, each of the several counties of the State shall be credited by the State Controller with the difference between the amount previously paid to the State during that fiscal year

and the amount due under the rate fixed in accordance with the provisions of section seven of this Act, and the amount so credited shall be deducted in making the next settlement with the State.

SECTION 10. The several County Auditors shall, annually, on or before the fourth Monday in October of each year, forward to the State Controller a statement under seal of his office of the aggregate assessment of all property on the assessment roll in his county, segregating the personal from the real property.

SECTION 11. It shall be the duty of each County Assessor to fix the valuation of all property which may be assessed by him at the valuation placed upon the same kind of property at the regular annual meeting of Assessors for the State.

SECTION 12. There shall be allowed and paid to each County Assessor attending the meetings of County Assessors required in section one, the actual expenses of such Assessors in going to and returning from his county to attend each meeting; and an itemized statement of such expenses duly verified shall be presented to the State Board of Examiners, who shall audit the same as other claims against the State are allowed and paid.

SECTION 13. Should any Assessor in this State neglect to assess property in accordance with the provisions of this Act, or laws now in force or effect, or place a greater or less valuation on any property that has been fixed at said meeting of Assessors, the State Board of Revenue, which is hereby created, consisting of the Governor, State

Controller and Attorney-General, shall instruct the District Attorney of said Assessor's county to bring suit against such Assessor and his bondsmen for the sum of five hundred dollars as a penalty therefor, which said sum, when collected, shall be paid into the General Fund of the State Treasury, and such Board may instruct the Attorney-General to request the District Attorney of said Assessor's county to institute suit against such Assessor for his removal from office for such neglect or refusal. The suit shall be tried in the District Court having jurisdiction in the county where property is situated.

SECTION 14. The District Attorney shall have the assistance and advice of the Attorney-General in prosecuting the suit in case the Governor and State Controller shall deem it advisable. In case of an adverse decision of the Court, the State shall pay all costs. Either party to the suit shall have the right of appeal to the Supreme Court and the usual stay of proceedings, upon the filing of the proper bond to be approved by the Judge of the Court.

SECTION 15. Neither the Governor, State Controller or Attorney-General shall receive any additional compensation for their services imposed by this Act; but shall be allowed their actual traveling expenses when absent from the Capitol on duty connected with or required by this Act. Such claim for expenses shall be accompanied by proper vouchers and shall be audited and allowed as other claims against the State. All printing necessary to carry out the provisions of this Act shall be ordered by the said State officers at the State Printing Office, and the State Printer is hereby authorized and directed to supply the same.

SECTION 16. Any taxpayer who shall have paid taxes on personal property prior to making the final levy during any fiscal year, shall be entitled to have any excess he may have so paid refunded at any time during that year by presenting a claim in regular form against the county where such taxes were paid, for the amount of such excess, and the same shall be audited and paid out of the excess so created in the State Fund in the county treasury.

SECTION 17. The sum of three thousand (3,000) dollars is hereby appropriated out of any money in the General Fund not otherwise appropriated to carry out the provisions of this Act.

SECTION 18. All Acts and parts of Acts, in so far as they conflict with the provisions of this Act, are hereby repealed.

SECTION 19. This Act shall take effect on and after its passage.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 40.

WELLS, FARGO & COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF NEVADA.

BRIEF FOR DEFENDANT IN ERROR.

This was an action by the State of Nevada to recover delinquent taxes upon property of the plaintiff in error, entered and described in the assessment roll in the following language (R., opp. p. 30):

> "Wells, Fargo & Co.—That certain property belonging to Wells, Fargo & Co. to wit: Right to carry express and right to transact all other business commonly done and transacted by Wells, Fargo & Co., over the railroad mileage operated by the Southern Pacific Company within the County of Humboldt. The railroad mileage of the said Southern Pacific Company within the County of Humboldt on which the said Wells, Fargo & Co. operates their express business is 140.14 miles, at a valuation of $300 per mile."

This assessment was made by the board of county assessors and the local county assessor as part of the general assessment of real and personal property in the State pursuant to the local statutes, which did not contain any specification of method for appraising the property of express companies, but merely directed that the valuation of real and personal property should be the actual cash value, taking into consideration the locality of the property, and should be uniform except in cases where the value was affected by the locality of the property or other consideration affecting its cash value (sections 1, 4, and 5 of Ch. L, Laws of 1901, as amended by the laws of 1903, Ch. LXIX, approved March 13, 1903; see appendix to brief of plaintiff in error); and as the State Supreme Court (Opinion, R., pp. 127-131) held that the assessment was authorized by and properly made under the constitution and statutes of the State, any contention here to the contrary is foreclosed (Western Union Tel. Co. *vs.* Missouri, 190 U. S., 412; Pittsburgh, etc., Ry. Co. *vs.* Backus, 154 U. S., 421).

And the case differs from others that have been before this court in that the action of the assessors was not final but, in respect of the amount of the assessment, subject to review by the court in the instant action. Section 52 of the general revenue act (Rev. Laws, sec. 3664; see Opinion, R., p. 125) specified that, among others, the following defenses might be interposed to an action for delinquent taxes:

> "Fifth. Fraud in the assessment, or in failing to comply with the provisions of this act; or that the assessment is out of proportion to and above the actual cash value of the property assessed; provided, however, that in such last-mentioned case, where the defense is based upon the ground that the assessment is above the value of the property, the defense shall only be effectual as to the proportion of the tax based upon such excess of valuation, but in no case shall an entire assessment be declared void."

So that the plaintiff in error had ample opportunity to contest in the action the amount of the assessment and, if excessive, have it reduced to a fair valuation with corresponding reduction of the amount of recovery, but apparently did not seek relief on that ground.

In its answer (R., p. 4) the plaintiff in error attacked the assessment as invalid under the local law and constitution for various reasons and as violative of the Federal Constitution, in that it was an attempt to tax or impose a burden upon interstate commerce, and in an amendment to its answer (R., p. 11) set up that the State law was invalid, in that it did not provide for notice, that the assessment was invalid for lack of notice or opportunity to be heard, and that the total value of property owned by it and situate in the State and used in its business was only $11,374.67, and in Humboldt County $383.98, and that the attempted assessment and tax were confiscatory, in that the total tax assessed against its property in the whole State equaled in amount the total value of the property owned by it in the State, whereas all other property was assessed at an approximate rate of $2.25 for each $100 of assessed value and, upon information and belief, that other property in the State was assessed at sixty per cent of its actual value.

It will be seen that in its answers the plaintiff in error ignored the proportionate part of the value of its business as a unit which, as intangible property, had situs in the State and county for the purpose of taxation, and did not, as it might have done under the local statute, *supra*, set up as a defense that the amount of the assessment was in excess of such proportionate part of such intangible property.

The assessment having been sustained by the trial court and on appeal by the State Supreme Court, the plaintiff in error here attempts to attack it upon the grounds (Specification of Errors, bf., pp. 10-11, rearranged):

1. That it is an attempt to impose a burden upon interstate commerce—

(*a*) In that it is a tax on the right to engage in interstate commerce and not a tax on property;

(*b*) In that it attempts to tax interstate commerce and the property therein used in larger proportion than other property in the State.

2. That it amounts to the taking of property without due process of law—

(*a*) In that the assessment was made without notice or opportunity to be heard;

(*b*) In that the tax is upon earnings and not upon property and, therefore, without foundation in the laws of Nevada or the United States.

3. That it denies the plaintiff in error the equal protection of the laws, in that it results in unequal taxation of the plaintiff in error and its property.

4. That the manner of making the assessment amounts to a fraud upon the constitutional rights of the plaintiff in error.

The contention (2, *a*) that the assessment was made without opportunity to be heard is disposed of by the fact that the assessment was made as part of the general assessment of property for taxation pursuant to and as provided by the local revenue laws, as held by the State Supreme Court, *supra*, and that under the local law the plaintiff in error had full opportunity in defense of the suit to raise all objections that might have been raised before the taxing officers and, if it could show that the assessment was excessive, to have the recovery reduced to the proper amount of taxes upon a fair valuation.

The contention (1, *b*) that the property was taxed in larger proportion than other property in the State and (3) that the assessment results in unequal taxation, would seem to be foreclosed by the fact that the plaintiff in error had full opportunity in the instant case to litigate those questions as issues of fact, and if they could be regarded as raised by the pleadings (*vide supra*) were not specifically or clearly re-

served in the memorandum of exceptions (R., p. 105) or exceptions to findings (R., p. 109), adopted as specifications of error on appeal to the State Supreme Court, and were not considered by the latter court; and, in any event, as will be shown, do not find support in the record.

The contention (1, *a*) that the tax was an attempted burden on interstate commerce is, first, that, although the assessors undertook to assess the intangible property of the plaintiff in error under sanction of Adams Express Co. *vs.* Ohio (165 U. S., 194; 166 U. S., 185), yet in entering the assessment on the assessment roll they improvidently used language which took the tax out of that permissible category and into the prohibited category of tax on interstate commerce, and that the State must stand or fall upon the language used (Brief, p. 16); and, second, that inquiry into the proceedings of the assessors discloses that their method of arriving at the valuation involved direct taxation of interstate commerce.

The remaining contentions (2, *b*) that the tax is upon earnings and (4) that the manner of making the assessment amounts to a fraud, depart from the position that the State must stand or fall upon the language of the assessment roll and go to the method of the assessors in arriving at the valuation. As issues of fact they were litigatable in the action and would seem to be foreclosed by the judgment below, and, at any rate, as will be shown, are without support in the record.

It is first to be observed that the assessment is upon property: "that certain property belonging to Wells, Fargo & Co.," described as "the right to carry express and right to transact all other business commonly done and transacted" by the plaintiff in error over 140.41 miles of railroad in Humboldt County.

The State Supreme Court (Opinion, R., p. 132) observed that the description suggested by counsel for the express company, viz., "The property of Wells, Fargo & Company, situ-

ated in Humboldt County, as united in ownership and use for express business," would have been better; but it may be observed that such phraseology does not in itself convey the idea that the intangible element of the business, as property, is included and would be open to the contention that only tangible property in the county is intended.

As repeatedly held by this court, it is, however phrased, the right of doing business, interstate as well as intrastate, which, as intangible property, is a proper subject of local taxation. The only condition is that there shall be, in fact or effect, a fair property tax (U. S. Express Co. *vs.* Minnesota, 223 U. S., 335).

And it is fundamental that a claim of constitutional right can be brought to this court only when the party has pursued the remedy afforded by the State law and procedure.

As already noticed, the plaintiff in error had ample opportunity in the instant action to plead and prove the fair value of its intangible property which might be regarded as having situs in Humboldt County, and have the tax, if excessive, reduced to a fair amount. Whether it undertook to do this or undertook merely to show that the assessors adopted a wrong method of valuation may be debatable. In either event, it would seem to be foreclosed from its contention here, for, if it furnished the trial court with the data for ascertainment of the fair valuation, the State Supreme Court was justified in finding, as a conclusion of fact from that data, that the valuation of $300 a mile was not excessive (Opinion, R., pp. 134-135).

On the other hand, if it be regarded as having undertaken merely to criticise the supposed method of the assessors in arriving at the valuation, and did not furnish the trial court with proper and sufficient data from which to arrive at the fair valuation, then it did not pursue the full and complete remedy afforded by the State law and procedure.

The real situation seems to have been that, while assuming merely to attack the supposed method of the assessors in

arriving at their valuation, the plaintiff in error put in evidence at the trial data sufficient to enable the State Supreme Court to find as fact that the assessed valuation was not excessive.

To demonstrate this a brief review of the proceedings at the trial will suffice.

The State introduced the delinquent tax list containing the assessment (R., opp. p. 30), and produced Leonard, the county assessor, whose testimony (R., pp. 31-33), beyond explaining that the amount of the assessment, $42,042 (140.-14 miles at $300 per mile), was erroneously entered in the real estate column instead of the personal property column, was merely formal; and rested.

The plaintiff in error thereupon produced in pamphlet form, as Defendant's Exhibit 1, the minutes of the meeting of the State board of assessors, and offered so much thereof as referred to the proceedings in reference to taxation of the plaintiff in error (R., p. 34). This pamphlet, or the portion offered in evidence, does not appear in the statement on appeal (or in the record here), but, by stipulation, was sent with the record to the State Supreme Court and was before that court. The only disclosure in the record here of the contents of those minutes is in the opinion of the State Supreme Court (R., pp. 119-122), where a statement prepared and presented to the board by Shaughnessy, a member of the State Railroad Commission, is set out in full, and brief extracts from the minutes (regarded by that court as sufficient to show the action of the board) are given.

Shaughnessy, produced by the plaintiff in error, was examined at great length in reference to the statement which he had presented to the board, and produced a report for the year 1908, which the plaintiff in error had submitted to the State Railroad Commission (printed in full in the record at pp. 46-59), on which he had made pencil memoranda (R., p. 60), and which report, as he testified (R., p. 62), was placed before the board.

In the statement submitted by Shaughnessy to the board it appears that, apparently attempting to follow the (statutory) method of valuation sustained in U. S. Express Co. *vs.* Minnesota, *supra*, he took from the report of the plaintiff in error to the State Railroad Commission for 1908 the amounts of intrastate business, $124,794.12, and interstate business *received*, $583,485.97, aggregating $850,185.68. In his testimony he repeatedly made the erroneous assertion that he had included in that aggregate the amount of interstate business *forwarded*, which was $141,905.59.

From the base of $850,185.68 he deducted one-half as the amount paid the railroads for express privilege, and $134,007.99, the aggregate of office expenses in Nevada (R., p. 59), leaving a balance of $291,084.85, which he regarded as the net earnings in Nevada, and, capitalizing that at seven per cent, reached the result of $4,000,000 as the value of the property, real, personal and intangible, franchises, etc., of the plaintiff in error in Nevada. To this he applied the ratio of 40 per cent, which he stated was the ratio of assessment of other property in the State (but see Amended Answer, R., p. 13, where the plaintiff in error alleged, upon information and belief, that other property in Nevada was assessed at 60 per cent of its actual value), and reached the result of $1,600,000 as the valuation for the purpose of taxation, which, apportioned to 1,890 miles of rail and stage lines, represented $847 per mile. He further suggested the expediency of ignoring the stage-line mileage and making the assessment on the basis of $500 per mile for 1,700 miles of railroad express mileage.

The contention of the plaintiff in error, here, seems to be that the assessors adopted Shaughnessy's method of valuation, and the burden of its brief is criticism of it.

But it does not appear that the board of assessors adopted or followed Shaughnessy's method or recommendation. That they did not adopt his recommendation of $847 or $500 per mile is evidenced by the fact that they fixed the assessed

valuation at $300 per mile. And it appears that Judge Bartine, another member of the State Railroad Commission, appeared before the board of assessors and advocated apportionment, according to mileage, of the entire property of the express company, tangible and intangible, involved in its business as a unit, and read to the board the opinion of this court in the Adams Express Company case in 166 U. S., a copy of which was set out in full in the minutes (Opinion, R., p. 121).

The extracts from the minutes quoted in the opinion of the court below are as follows (R., pp. 121-122):

> "Judge Bartine: * * * Let me suggest further that in this Ohio case which I read the entire property of the express company was included by the Supreme Court to make it $16,000,000—$4,000,000 tangible and $12,000,000 consisting of the business they were doing. They were all lumped in together. So if you fix a valuation of $300 per mile, that would include all the utilities they use in the transaction of their business, and not tax them separately.
>
> "Mr. Owens: Mr. Chairman, I move that a valuation of $300 per mile be placed against Wells, Fargo & Company for all the railroad mileage they have in the State of Nevada.
>
> "Mr. McBurney: I second the motion.
>
> "Mr. Miles: Mr. Chairman, in this case, if it is levied on mileage only and not on horses, wagons, offices, office furniture, etc., the question is now as to whether or not the Assessor in including those items of property could seize and sell such property for the taxes, provided there was enough of that kind in the county.
>
> "Judge Bartine: I don't think there is any question about it at all as long as $300 per mile is placed as the valuation of their property. The Supreme Court has said that it is just to take aggregate mileage as the basis in order to find out what the rate of taxes should be. If you make the total tax $300 per mile in your county, that includes the offices, office furniture, safe and wagons and horses, etc., because they cannot do

the business without these things, and when you levy the tax of $300 per mile that is the entire tax to be levied upon that company.

"Mr. Owens: I will include that in my motion. I would like to know for the information of the board, after listening to the statement by Judge Bartine, if the various buildings are not included in the intangible property?

* * * * * * *

"The Clerk called the roll, and the motion to place a valuation of $300 per mile on Wells, Fargo & Company was unanimously carried."

The only other light thrown by the record upon the proceedings of the board of assessors is the testimony of Shaughnessy (R., p. 63):

"Q. Do you know the method by which the State Board of Assessors arrived at the three hundred dollars per mile valuation?

"A. No, I do not know the exact method.

"Q. Was that arrived at in your presence, or were you present at the deliberations of the Board in arriving at it?

"A. I was present there and explained the statement in a general way first.

"Q. That is the statement which appears in the record?

"A. In the record. I explained that statement, which recommended a valuation—or rather two valuations, one of $857 and another of $500 per mile to the Chairman of the Board, and to the Attorney General, and the Controller, that is the Board of Revenue, that is I explained it to them, and they in turn or through the Chairman explained it to the Board of Assessors. I was present during that time, and after it had been explained by the Chairman, and copies had been handed to each assessor or member of the Board, a member of the Board moved a recess of fifteen minutes, be taken, which was taken for deliberation and consideration of the matter of the Wells, Fargo & Company valuation. After reconvening the

> Chairman of the Board suggested that instead of five hundred dollars a mile being taken as recommended in that statement by the Commission, they go even lower and place the valuation at three hundred dollars per mile, and that valuation of three hundred dollars a mile was then adopted by the Board of Assessors after they reconvened, after that conference. What deliberations they had after that conference I have no knowledge, and I do not know what considerations were taken.
>
> "Q. Do you know what method of calculation, or what elements entered into the consideration in arriving at the figures of three hundred dollars per mile?
>
> "A. No, I do not."

So, in the absence of evidence to the contrary, it is to be presumed that the board of assessors proceeded fairly and fixed the valuation according to approved principles.

Certain it is that the assessors had before them, in the report of the plaintiff in error to the State Railroad Commission for the year 1908, proper and sufficient data upon which, by the capitalization-of-income method, to arrive at a fair valuation, and it is apparent that they were guided by the opinion of this court in the Adams Express Company case, *supra*, and reached their result by capitalizing the aggregate net earnings of the whole system, making liberal deductions, and apportioning according to mileage.

The plaintiff in error here contends that the report to the State Railroad Commission is not competent evidence in a tax proceeding, citing cases where State taxing officers, in defense of proceedings by railroads, attempted to introduce reports of the railroads to the Interstate Commerce Commission, which were held incompetent for reasons which do not exist here.

The report in question was one required by the State law and was introduced in evidence by the plaintiff in error, as was also its report to the Interstate Commerce Commission for 1910, and its argument here is based upon data furnished by those reports.

The plaintiff in error also recalled Leonard, the county assessor, who testified (R., pp. 80, *et seq.*) as to the tax rate of Humboldt County and towns therein for 1910, and produced the tax roll showing certain mining claims assessed at $1,500 to the plaintiff in error, the tax upon which, $23.55, was paid by one Ferguson, to whom the plaintiff in error had sold the claims.

These mines were the only real estate in the State assessed to the plaintiff in error.

As has been shown, the assessment of $300 per mile included, or was intended to include, all tangible property, personal or real, of the plaintiff in error located in the State and used in the business (U. S. Express Co. *vs.* Minnesota, *supra*).

The plaintiff in error also called McMichael, its division superintendent, who (R., pp. 92, *et seq.*) produced a statement showing the value of its personal property in Humboldt County as $383.98, the value of its personal property in the State as $11,374.67, and the values of three buildings at Carson, Palisade, and Reno as, respectively, $300, $1,562.52, and $4,904, aggregating $6,766.53; making the total value of real and tangible personal property in the State (not including the mining claims) $18,141.20, or, as stated by counsel (R., p. 88), $21,766.51.

The plaintiff in error also called Lawsan, its special agent at San Francisco, who was shown (R., p. 93) a statement of its intrastate business in the year 1910, prepared by its auditor, as follows:

Receipts from express operations—intrastate...		$76,342.18
Express privileges—railroads and stages	$34,810.74	
Taxes and licenses.....	2,543.26	
Operating expenses	32,762.57	
		70,116.57

It did not appear, however, how the figures in this statement were arrived at. By reference to the report of the plaintiff in error to the State Railroad Commission for 1908 it appears (R., p. 59) that the intrastate business for that year was $124,794.12 and the (State) office expenses $134,007.99, an excess of office expenses over earnings of $9,213.87; yet other memoranda shown Lawsan (R., p. 94) gave $15,795.93 as the net earnings (intrastate) for 1908. It is apparent, therefore, that to show net intrastate earnings the company's auditor must have prorated in some undisclosed manner the total operating expenses of the system.

Lawsan was also shown a copy of the report of the plaintiff in error to the Interstate Commerce Commission for the year ended June 30, 1910 (made subsequent to the assessment in question), and read therefrom (R., p. 95) figures showing the aggregate of property used in its business as $4,251,939.16, its total mileage as 60,919.84, and its mileage in Nevada (railroad, 16,074.56; steamboat, 20.25, and stage line 93.25) as 17,088.06.

Lawsan testified (R., pp. 97-98) that the plaintiff in error did not keep a separate account of the interstate business passing through Nevada, and that to pick out the interstate business originating in, terminating in, or passing entirely through the State, and apportion the mileage traveled in Nevada to the total mileage traveled, would be a tremendous job, involving an expense of $50,000 to $100,000.

The plaintiff in error thereupon rested.

The trial court held (Opinion, R., p. 100) that the action of the board of assessors was conclusive in the absence of fraud or of facts which would amount to fraud, and that the testimony of Shaughnessy (for the plaintiff in error) and the report of the plaintiff in error to the State Railroad Commission showed that it was the owner of intangible property in the State sufficient to preclude the court, in the absence of evidence tending to show fraud, from holding that the tax was excessive.

As grounds for new trial (which was denied) the plaintiff in error filed a memorandum of exceptions (R., p. 105) and exceptions to findings (R., p. 109), which later were made its specifications of error on appeal to the State Supreme Court. Careful examination of these two sets of specifications discloses that nowhere therein was there any contention that the assessed valuation was in excess of the fair value of the fraction of its unit plant or intangible property apportionable as having situs in the county or State for the purpose of taxation.

The nearest approach to such contention is found in specifications X and XI (R., p. 107), to the effect that it did not appear from the evidence that the actual worth of its (capital) stock was in excess of the value of its tangible property, and specifications XII and XIII (R., p. 107) to the effect that it did not appear that the intangible property attempted to be assessed had situs in Humboldt County.

No evidence was offered, however, as to the market value of the capital stock, and ascertainment of the intrinsic or actual value thereof necessarily involved capitalization of earning power and recognition, as intangible property, of any excess over the value of the tangible property used in the business.

If, conceding, as it must, that a proportionate part of the unit value of the plant and business had situs in Humboldt County for the purpose of taxation, the plaintiff in error intended to contend that the amount of the assessment was in excess thereof, the burden was upon it, under the State law and procedure, as held by the State Supreme Court (Opinion, R., p. 134), to establish the facts and show the fair valuation for the purpose.

Its contention in the State Supreme Court, however, as disclosed by its specifications of error, *supra*, seems to have been that there was no unit value or intangible property subject to apportionment. But the data put in evidence by it,

subjected to the capitalization-of-income method of valuation, give the following:

Gross receipts from operation, 1908 (R., p. 50)	$24,490,699.06
Operating expenses, 1908 (R., p. 53)	21,375,673.40
Net operating revenue	$3,115,025.66

Capitalizing at seven per cent (even six per cent would be reasonable, see Louisville and Nashville R. Co. *vs.* Greene, 244 U. S., 522, at 542) gives the unit value of the plant and business as $17,875,141.50, and dividing this by the aggregate mileage in 1908, 65,473.92 (R., p. 56), gives a valuation of $731 per mile.

The gross receipts and expenses for 1910 do not appear in the record. If the mileage given for that year, 60,919.84 (R., p. 96), be used, the result per mile would be greater. The result is also subject to increase by proper balancing of the values of the different classes of mileage. See Fargo *vs.* Hart, 193 U. S., 490, at 497.

In the 1908 report appear (R. p. 54) the amounts of expenditures for real property and equipment, aggregating $4,601,214.33, without disclosing whether or not the real property was all used in the business. It appears (R., p. 95) that in 1910 the aggregate of tangible property used in the business was $4,251,939.16. Deducting this latter sum from the ascertained unit value of the plant and business, *supra*, would leave $43,623,202.34 as *the value of the intangible element*, which, divided by the 1908 mileage, *supra*, would yield $666 per mile.

The Nevada statute directed that the valuation of property for taxation should be the actual cash value, taking into consideration the locality of the property.

As noted before, in its amended answer the plaintiff in error alleged, upon information and belief, that other property in Nevada was assessed at sixty per cent. of its actual

value, while Shaughnessy used the ratio of forty per cent., which he stated was the rate of assessment of other property in the State. There was no other proof on the subject, neither the trial court nor the State Supreme Court recognized any such practice, and the mere statement of Shaughnessy, who was not one of the Assessors, is hardly sufficient to establish such practice contrary to the statute.

This court has held that where property in question was assessed, in accordance with the local statute, at its fair cash value, the owner could not complain that other property was assessed at a lower rate; a principle which may be subject to the qualification that a systematic and intentional under or over assessment of one or more classes of property in violation of the law, whereby one or more classes of property is made to bear an undue proportion of the burden of taxation, presents a good cause of action for relief from the payment of the unjust part of the proposed tax (Raymond *vs.* Chicago Traction Co., 207 U. S., 20.)

The plaintiff in error, however, apparently does not contend that this is a case of the latter class, but merely that the assessors, misled by Shaughnessy, followed a wrong method or acted without sufficient data.

In any event, there is nothing in the record tending to show systematic or intentional overvaluation. On the contrary, the meager light thrown upon the proceedings of the assessors indicates that, in the absence of a statutory method of appraisement, they proceeded, in the faithful discharge of their duty, and guided by the decision of this court in the Adams Express Company case, to impose upon the plaintiff in error only its fair share of the burden of local taxation which it theretofore had escaped through lack of action by their predecessors in office. And, as shown, the data introduced in evidence by the plaintiff in error would, if necessary, sustain the contention that $300 per (railroad) mile was not in excess of even forty per cent of the fair unit value of the plant and business distributed on the mileage basis.

Although, as noticed, the plaintiff in error had no exception claiming excessive valuation or invoking the power of the court to reduce the amount of recovery, it appears that in the State Supreme Court (Opinion, R., p. 135) it contended that its net income from intrastate business in 1910 was only $6,225.61, and that, if any basis of capitalization was to be taken to determine the value of the property within the State, it should be that sum.

And, although not called upon to do so by any exception in the record, the State Supreme Court disposed of the question whether the assessment was excessive, saying (R., pp. 134-135):

> "Is an assessment of appellant's personal property, tangible and intangible inclusive, upon a mileage basis of $300 per mile of the lines of railroad over which appellant conducts its business in this State excessive? The burden of establishing excessive valuation was upon the defendant (Rev. Laws, sec. 3664, *supra*). Assuming that the net operative earnings of appellant were substantially the same in 1910 as in 1908, which appears to have been conceded, we have the sum of $3,115,026.46 as the net operative revenue derived from the tangible and intangible property combined in its business. This is a ten per cent net earning on property of the value of over $31,000,000. Taking the entire operative mileage of the company, 65,474 miles, including nearly 15,000 miles of steamship lines, and we have a net earning of approximately $48.00 per mile. Even if we exclude from a capitalization of the net earnings of the company upon a ten per cent basis the value of all the property of the company situated outside the State of Nevada and used in its operative business, to wit, $4,251,939.16, the figures would still show a net earning of over $40.00 per mile for the entire system, or a valuation of $400.00 per mile for the system as a whole.
>
> "In taking ten per cent as a basis of capitalization of the net earnings of the company, we do not wish to be understood that so high a rate would be entirely

just to the State, but such rate is used for the purpose of showing that the valuation placed upon appellant's property was well within a capitalization determined from an assumed high rate of income.

"Whether the system of determining the valuation of appellant's property, applied by the State board of assessors, was correct or not, it does not appear that it operates to impose an excessive valuation. The fact that erroneous methods may in good faith have been used to determine valuations, is immaterial, we think, if an excessive valuation did not result therefrom.

"In taking the total operative mileage of the company in making the above estimate of value, we do not wish to be understood as holding that the ocean steamship mileage should be included. For the present we express no opinion as to whether that mileage should be considered. Assuming that it ought not to be included and assuming eight per cent to be a fair rate of interest upon which to estimate the value of appellant's property subject to assessment upon a mileage basis, we would have resulting a valuation in excess of $750 per operative mile.

"Appellant contends that the net income of the company from its intrastate business in Nevada for the year 1910 was only $6,225.61, and if any basis of capitalization is taken to determine the value of property within the State it should be on this sum. This calculation leaves out entirely, as a means of determining the value of the tangible and intangible property of the company within the State, net receipts from interstate business, and does not take into consideration at all the net operative receipts of the entire system, and is not a fair means of determining valuation as pointed out by the Supreme Court of the United States in the 165th and 166th U. S. Reports, *supra*."

Here, abandoning its contention below that net income from intrastate business alone should be the basis of capitalization, and evidently appreciating that it cannot get away from the result of treating its whole business as a unit, capitalizing its aggregate net income, and distributing upon

any reasonable basis of mileage, the plaintiff in error now argues that the unit value of its plant and business as evidenced by its aggregate net earnings should be ignored, and resort had to a sort of revision of Shaughnessy's method, wherein the gross earnings from intrastate business and interstate business (in theory to be pro-rated according to mileage traveled) in Nevada (which the testimony of Lawsan, *supra*, demonstrated was impracticable of ascertainment) arrived at upon a purely arbitrary and fanciful percentage basis, is used as the base, the corresponding operating expense obtained by apportioning the total operating expenses of the whole system according to the ratio which such arbitrarily estimated base bears to the total gross earnings, and the difference, regarded as the net income in Nevada, then capitalized at eight per cent, and forty per cent of the result distributed on the basis of railroad mileage in Nevada, yielding a final result of $195 per mile.

On the strength of this fanciful and arbitrary theory of valuation, the plaintiff in error asks this court to interfere with the judgment of the State courts on the pure issue of fact (of which they had full jurisdiction) whether the valuation of $300 per mile was excessive.

In conclusion, we submit that the record does not furnish support for any substantial constitutional question, that this court is not called upon to review the judgment of the court below upon the issue of fact as to whether the assessment in question was excessive, and that, in any event, the judgment of the court below was right and should be affirmed.

Respectfully submitted,

GEORGE B. THATCHER,
Attorney General of the State of Nevada.
WILLIAM C. PRENTISS,
Of Counsel.